

United States
Circuit Court of Appeals
For the Ninth Circuit.

T. F. TURNER,

Appellant,

VS.

KATE J. WELLS, IRONSIDES MINING RE-
DUCTION AND LEASING COMPANY, a
Corporation, MRS. E. R. SHOCKMAN,
GEORGE E. ARNOLD and C. J. HECK-
MAN,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Southern District of California,
Northern Division.

Filed

SEP 23 1916

F. D. Monckton,

Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

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For Appellees:

Messrs. S. E. VERMILYEA and S. L. CAR-
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Los Angeles, California. [3*]

*In the District Court of the United States of Amer-
ica, for the Southern District of California,
Southern Division, Ninth Circuit.*

No. 45-CIVIL. IN EQUITY.

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS et al.,

Defendants.

Citation.

United States of America,—ss.

To Kate J. Wells, Ironsides Mining Reduction and
Leasing Company, a Corporation, Mrs. E. R.
Shockman, George E. Arnold and C. J. Heck-
man, Greetings:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit to be held at the City of San
Francisco, in the State of California, on the 20th

*Page-number appearing at foot of page of original certified Record.

day of Jany., 1916, pursuant to an order allowing an appeal entered in the clerk's office of the District Court, in and for the Southern District of California, Southern Division, in that certain suit in equity numbered 45—Civil in Equity, wherein you are defendants and appellees and T. F. Turner is complainant and appellant, to show cause, if any there be, why an order or decree of said Court made and entered March 6th, 1915, against said appellant in the said order allowing appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable BENJAMIN F. BLEDSOE, United States District Judge of the Southern District of California of the Ninth Judicial Circuit, this 22d day of December, 1915.

BENJAMIN F. BLEDSOE,
U. S. District Judge for Southern District of California. [4]

Due service and receipt of a copy of the within Citation is hereby admitted this 23 day of December, 1915.

S. E. VERMILYEA,

S. L. CARPENTER,

Solicitor for Defendants. [5]

[Endorsed]: No. 45—Civil. In Eq. In District Court of U. S., Southern District of Cal., Southern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells, et al., Defendants. Citation. Filed Dec. 23, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [5a]

*In the District Court of the United States, in and
for the Southern District of California, North-
ern Division.*

No. 45-CIVIL. IN EQUITY.

T. F. TURNER,

Complainant,

vs.

KATE J. WELLS, IRONSIDES MINING RE-
DUCTION AND LEASING COMPANY, a
Corporation, MRS. E. R. SHOOKMAN,
GEORGE L. ARNOLD and C. J. HECK-
MAN,

Defendants. [6]

*In the District Court of the United States, for the
Southern District of California, Northern
Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING RE-
DUCTION AND LEASING COMPANY, a
Corporation, MRS. E. R. SHOOKMAN,
GEORGE L. ARNOLD and C. J. HECK-
MAN,

Defendants.

Second Amended Bill of Complaint.

T. F. Turner, a citizen of the United States and
of the State of Massachusetts, plaintiff herein, by

P. F. Carney and Wm. B. Ogden, his solicitors, by leave of Court files this, his second amended Bill of Complaint, and complains of Kate J. Wells, Ironsides Mining Reduction and Leasing Company, a corporation, Mrs. E. R. Shockman, George L. Arnold and C. J. Heckman, each a citizen and inhabitant of the State of California, and alleges:

I.

That the plaintiff herein is a citizen and resident of the State of Massachusetts.

II.

That the defendants Mrs. E. R. Shockman, George L. Arnold and C. J. Heckman, are citizens and residents of the State of California.

III.

That the defendant Ironsides Mining Reduction and Leasing Company is a corporation organized and existing under and by [7] virtue of the laws of the State of California.

IV.

That this suit is between citizens of different states. That the amount in controversy herein exceeds the sum of \$3,000, exclusive of interest and costs.

V.

That on or about the 10th day of March, 1907, at Rhyolite, Nye County, State of Nevada, plaintiff J. F. Creel and A. W. Wells made and entered into a contract and agreement in and by which it was mutually contracted and agreed that the said plaintiff and J. F. Creel were to furnish a prospecting outfit, to wit: Team, wagon, mining outfit, tools, sup-

plies and provisions, and as needed from time to time to advance moneys for said undertaking, and the said A. W. Wells was to furnish his time and labor in prospecting for lodes and deposits upon the public mineral domain in the State of California, and to locate all discoveries and to record the same in the joint names of plaintiff J. F. Creel and himself, and in their names only as equal owners; that is, one-third each; that said contract and agreement was to continue until mutually dissolved.

VI.

That in furtherance and pursuance of said contract and agreement and on or about the date aforesaid, plaintiff and the said J. F. Creel did furnish to the said A. W. Wells a prospecting outfit consisting of a team of mules, wagon, mining outfit, tools, supplies, provisions and money from time to time as needed and in all respects kept and performed the said agreement upon their part. That the said Wells took possession of the said prospecting outfit and proceeded to Inyo County, State of California, on a prospecting trip, and that while said contract and agreement was in force and effect the said Wells made discoveries [8] and locations in the name of plaintiff Creel and himself of the Summit, Callahan, Don Creel, Extension and T. F. T. lode mining claims in what is now known as the Beveredge Mining District, Inyo County, California; that later, and while said contract and agreement was still in force and effect, and by reason and in pursuance thereof, the said Wells discovered and located the following lode mining claims in what is now known as the

Beveredge Mining District, Inyo County, California; Ironsides claim, located June 22, 1907, recorded in book C, page 509, records Inyo County, California, said location having been made in the name of Mrs. A. W. Wells and B. T. Robinson; Iron Max claim, located June 28, 1907, recorded in book I, page 277, records Inyo County, California, said location having been made in the names of B. T. Robinson and Harold N. Robinson; Beveredge Belle claim, located August 17, 1907, recorded in book 1, page 547, records Inyo County, California, said location having been made in the names of Mrs. Kate J. Wells and B. T. Robinson; Catch-em-Mac claim, located June 22, 1907, recorded in book 1, page 276, records Inyo County, California, said location being made in the names of Mrs. A. W. Wells and B. T. Robinson; Garnet Fraction claim, located August 1, 1907, recorded in book 1, page 545, records of Inyo County, California, said location being made in the names of Mrs. A. W. Wells and B. T. Robinson; Golden Rule No. 1 claim, located July 29, 1907, recorded in book 6, page 587, records of Inyo County, California, said location having been made in the name of Mrs. A. W. Wells and B. T. Robinson; Kate J. claim, located July 29, 1907, recorded in book 1, page 546, records of Inyo County, California, said location having been made in the name of Kate J. Wells and B. T. Robinson; Golden Rule No. 2 claim, located June 7, 1907, recorded in book 2, page 510, records of Inyo County, California, said location having been made in the names of Mrs. A. W. Wells and B. T. Robinson; [9] Golden Rule No. 3 claim, located June 8, 1907,

recorded in book 1, page 274, records of Inyo County, California, said location being made in the names of Mrs. A. W. Wells and B. T. Robinson; Grand View claim, located July 15, 1907, recorded in book 1, page 545, records of Inyo County, California, said location having been made in the names of Mrs. A. W. Wells and B. T. Robinson; Protection No. 1 claim, located July 29, 1907, recorded in book 6, page 589, records of Inyo County, California, said location being made in the names of Mrs. A. W. Wells and B. T. Robinson.

VII.

That as plaintiff is informed and believes, and so alleges, that the said A. W. Wells made all of said discoveries and wrote all of the location notices placed upon said locations, and that he performed all the preliminary acts of location upon each and all of said locations in accordance with the local mining rules and regulations, the laws of the State of California and of the United States, and subsequently had such locations filed of record at Independence, Inyo County, California.

VIII.

That Kate J. Wells and Mrs. A. W. Wells is one and the same person and *was* at all times herein mentioned the wife of the said A. W. Wells; that Harold E. Robinson and B. T. Robinson are sons of Mrs. A. W. Wells and the stepsons of A. W. Wells; that the said Kate J. Wells, B. T. Robinson and Harold E. Robinson each and all well knew that the said A. W. Wells, at the time the said locations were made in their names, was working under a grubstake con-

tract and agreement with plaintiff and said Creel, and that said last-mentioned locations were all wrongfully and fraudulently made in their names in pursuance of a conspiracy entered into between the said A. W. Wells, Kate J. Wells, B. T. Robinson and Harold E. Robinson, and for the purpose [10] of defrauding the said Turner and Creel of their rights under said contract and agreement; that said plaintiff nor the said Creel ever had any knowledge whatever that said locations were made in fraud of their rights by the said A. W. Wells in violation of their contract and agreement until the forepart of February, 1912, at which time the said A. W. Wells disclosed to the said Creel upon meeting him, that all of the said locations were made by him while he acted under and in pursuance of said grubstake agreement; that prior to the month of February, 1912, the said plaintiff and said J. F. Creel and the said A. W. Wells were, and had been at all times, upon the most friendly basis, and the said plaintiff and the said J. F. Creel were not residents of the State of California, and were not residents of the Beveredge Mining District, and had no means of ascertaining the happenings of, operations in, or development of said district, except upon information received from said A. W. Wells, and that the said plaintiff and the said Creel did trust and rely upon the said A. W. Wells implicitly as a partner in all matters pertaining to the location of the property acquired under the grubstake agreement, and that their business dealings at all times were such that,

so far as they knew, he was worthy of the faith and trust imposed in him by them, and that they did rely implicitly upon his opinion and advice in all things touching said affairs, and that they did not suspect that he had fraudulently located the mining claims mentioned in paragraph VI hereof at any time prior to or on or about the month of February, 1912, and did not then have knowledge, or suspect, or would not now know that he had so fraudulently located the said claims, had it not been for the fact that the said A. W. Wells and Kate J. Wells had a disagreement in regard to the said property, and other matters, and that the said A. W. Wells, feeling [11] aggrieved, informed the said Creel of the facts in regard thereto, and that the said plaintiff thereupon took such necessary steps as he deemed wise and expedient for the purpose of corroborating the statement of the said A. W. Wells, and that immediately after the said evidence was gathered, so corroborating the statement of the said A. W. Wells, this suit was brought, and that the said plaintiff and the said Creel did not acquiesce in and delay the demands of his or their rights unnecessarily long, nor to the injury of said defendants; that the only occasion prior to the month of February, 1912, when the said Turner and Creel were present in the said Beveredge Mining District was for a limited period in the summer of 1907, and in going over the property located by the said A. W. Wells in the name of Wells, Turner and Creel, the said Turner asked the said Wells why he did not locate the property on top of

the hill, meaning the Ironside, Iron Mac, and other locations, and to such inquiry the said Wells made reply that those locations had been made and held by Mrs. A. W. Wells and said Robinson for a long period of time prior to the year 1907, and prior to the time of his coming into said Beveredge Mining District, as hereinbefore set forth, and that the said Turner and Creel having confidence in the statements made by said Wells, relied thereon, and continued to contribute to the said Wells, supplies and moneys, provided by the terms of the said grubstake agreement, for many months thereafter; that at the meeting of the said Creel with the said Wells in the month of February, 1912, the said Wells stated to the said Creel that he had been trying to locate him and the plaintiff herein for more than a year past, and had advertised in the newspapers for them, so he could inform them of the fraud that he had practiced upon them in the making of the locations made in the names of Mrs. A. W. Wells, H. Robinson and B. T. Robinson; that the locations known as Ironside, [12] Iron Mac and others described in paragraph VI hereof were never at any time discussed between the said A. W. Wells and the plaintiff and Creel or any of them, or between the plaintiff and said Creel and the defendants herein named, or any of them, except as herein alleged; that plaintiff and the said Creel have never been residents of the said Beveredge Mining District, or acquainted with its affairs, and have resided a great distance therefrom, and were never acquainted with any facts which would lead them to suspect the violation of the said

grubstake agreement by the said A. W. Wells, until about the month of February, 1912, as hereinabove set forth.

IX.

That the said Kate J. Wells now holds the legal title to each and all of said locations.

X.

That as plaintiff is informed and believes, and so alleges, that the Ironsides Mining Reduction and Leasing Company was organized on or about the 8th day of June, 1912, by the defendant Kate J. Wells; that said company has a capital of \$100,000, 100,000 shares of capital stock of the par value of \$1 per share; that of said 100,000 shares of stock the said Kate J. Wells is the owner of 60,000 shares; that 40,000 shares, as plaintiff is informed and believes, was placed in the treasury of said company; that the said Kate J. Wells is in the absolute control of said company; that Harold E. Robinson is a director of said company, and William M. Johnson is an officer and director of said company, each with less than 100 shares of the stock of said company; that as plaintiff is informed and believes and so alleges, the defendant, Kate J. Wells, leased to the Ironsides Mining Reduction and Leasing Company the Ironsides, Iron Mac and Beveredge Belle lode mining claims for a period of five years, without royalty.

[13]

XI.

That as plaintiff is informed and believes, and so alleges, that the defendant Mrs. E. R. Shockman

claims some interest in the Golden Rule No. 2 lode mining claim, the nature and extent of which is unknown to this plaintiff, but plaintiff avers that he is the equitable owner of an undivided two-thirds' interest in and to said Golden Rule No. 2 lode mining claim by virtue of his and his associate, J. F. Creel's contract and agreement with the said A. W. Wells in the location of such claim.

XII.

That as plaintiff is informed and believes, and so alleges, that the defendants George L. Arnold and C. J. Heckman claim a lien upon the Ironsides lode mining claim by virtue of a mortgage executed by the said Kate J. Wells to said defendants to secure the payment of a note for the sum of \$2,700; plaintiff avers that he is the equitable owner of an undivided two-thirds interest in and to said Ironsides mining claim by virtue of his and his associate, J. F. Creel's agreement and contract with the said A. W. Wells in the location of said claim.

XIII.

That as plaintiff is informed and believes, and so alleges, that the defendant, Kate J. Wells, has worked, mined, extracted, sold and marketed large quantities of valuable ore and mineral from the said lode mining claims to the value of \$100,000, and is working and will continue to work, mine, extract, sell and dispose of the ore and minerals from said mining claim unless restrained by the equitable power of this Honorable Court, all to the great and irreparable damage of this plaintiff.

XIV.

That as plaintiff is informed and believes, and so alleges [14] that the Ironsides Mining Reduction and Leasing Company, as the lessee of the Ironsides, Iron Mac and Beveredge Belle lode mining claim, is working and will continue to work, said claims and to mine, extract, sell and dispose of the ores and minerals taken therefrom, to the great and irreparable damage of this plaintiff, unless restrained by the equitable powers of this Honorable Court.

XV.

That as plaintiff is informed and believes, and so alleges, that the Ironsides Mining Reduction and Leasing Company, by and through its officers and agents, and particularly through its president, Kate J. Wells, will sell and continue to offer for sale the stock of said company to innocent purchasers who, relying upon the false representations by its said officers and agents and the said Kate J. Wells as to the title of said property as herein set forth, will be defrauded out of their money unless restrained by the equitable powers of this Court.

XVI.

That as plaintiff is informed and believes, and so alleges, that the said Kate J. Wells has no property other than her alleged title in said mining location and is insolvent.

XVII.

That the said J. F. Creel on or about the 15th day of May, 1912, sold, assigned, transferred and set over unto the plaintiff herein, for a valuable consideration, all his right, title and interest of, in and to the

said contract and agreement between the said Turner, Wells and himself, and all rights thereunder.

WHEREFORE, in as much as plaintiff has no sufficient remedy at law for the wrong herein complained of, to the end that he may obtain the relief to which he is entitled in the premises, prays: [15]

1. That the plaintiff be decreed and adjudged to be the owner of an undivided two-thirds interest in the said property, and that the defendant, Kate J. Wells, be decreed to hold the same in trust for plaintiff, and that she be required to execute a proper deed of conveyance of the legal title of a two-thirds interest in the said property; that upon her failure so to do that the Court appoint a commissioner to make such conveyance.

2. That the defendants Ironsides Mining Reduction and Leasing Company, Mrs. E. R. Shockman, George L. Arnold and C. J. Heckman, be required to set forth their respective claims or demands to the said mining claims and premises, to the end that the same may be justly adjudicated and be declared null and void as against plaintiff's said interest.

3. That the defendant, Kate J. Wells, be required to account to this plaintiff for all the profits and proceeds of ores and minerals mined, extracted, sold and marketed from said property from the 7th day of June, 1907, to the present date.

4. That during the pendency of this action the defendant Kate J. Wells, be restrained and enjoined from selling, conveying or encumbering said property; that she be restrained and enjoined from working, mining, extracting, selling or disposing of the

ores or minerals of said property; that the Ironsides Mining Reduction and Leasing Company, its officers, agents, servants, employees and attorneys be restrained and enjoined from selling, offering for sale, or parting with, any of the capital stock of said company, or from working, extracting, selling or disposing of any of the ores or minerals from the Ironsides, Iron Mac and Beveredge Belle lode mining claims until the further order of the Court in the premises. [16]

5. That as soon as may be after the filing of the complaint herein, a receiver may be appointed by this Honorable Court, to go into possession of said mining claims and take charge of the same.

6. That a writ of subpoena be issued and directed to the said defendants, Kate J. Wells, Ironsides Mining Reduction and Leasing Company, Mrs. E. R. Shockman, George L. Arnold and C. J. Heckman, thereby commanding them, and each of them, at a certain time and under certain penalty therein limited, personally to appear before this Honorable Court, and then and there full, true and direct answers make, but not under oath, to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against them in the premises, as shall be meet and agreeable in equity.

7. That the plaintiff have such other and further relief as to the Court may decree meet and proper; and for costs.

P. F. CARNEY,
WM. B. OGDEN,
Solicitors for Plaintiff.

State of California,
City and County of Los Angeles,—ss.

T. F. Turner, being first duly sworn, on oath deposes and says: That he is the plaintiff above named; that he has read the above and foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

Subscribed and sworn to before me this —— day of ——, 1914.

Notary Public. [17]

[Endorsed]: No. 45—Civil. In Equity. In the District Court of the U. S., for the Southern District of California, Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells and Ironsides Mining Reduction and Leasing Co., a Corporation et al., Defendants. Second Amended Bill of Complaint. Main 9152. 10317. P. F. Carney and William B. Ogden, 711 American Bank Building, Second and Spring Streets, Los Angeles, Cal., Attorneys for Plaintiff. Filed Apr. 18, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [18]

*In the District Court of the United States, for the
Southern District of California, Northern Divi-
sion.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING RE-
DUCTION AND LEASING COMPANY, a
Corporation, MRS. E. R. SHOOKMAN,
GEORGE L. ARNOLD and C. J. HECK-
MAN,

Defendants.

Answer to Second Amended Bill of Complaint.

The joint and several answer of defendants Kate J. Wells and Ironsides Mining Reduction and Leasing Company to the second amended bill of complaint of T. F. Turner, the plaintiff.

These defendants respectively now and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill contained, for answer thereunto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer to, answering say: [19]

I.

That as to the allegation of the said amended bill that the plaintiff is a citizen and resident of the State of Massachusetts, these defendants have no knowl-

edge or belief in respect thereto and pray that strict proof of said allegation be required of the plaintiff.

II.

These defendants do not, nor does either of them have knowledge as to the truth of the allegations of the fifth paragraph of said amended bill.

III.

Answering the sixth and seventh paragraphs of said amended bill these defendants say that they and each of them are and is without knowledge as to whether the plaintiff and J. F. Creel mentioned in said bill, did furnish to A. W. Wells, therein mentioned, a prospecting outfit consisting of a team of mules, mining outfit, tools, supplies, provisions and money from time to time as needed, or any of such things, or whether, if such things or any of them were furnished by the plaintiff and said J. F. Creel or either of them to the said A. W. Wells, the same or any thereof were furnished or supplied in furtherance or pursuance of such contract as is set forth in the fifth paragraph of said bill of complaint, or in furtherance or pursuance of any contract or agreement entered into by plaintiff and J. F. Creel on the one part and A. W. Wells on the other. They admit, however, that said A. W. Wells did in the spring of 1907 go into Inyo County, State of California, with a prospecting outfit such as is described in said sixth paragraph, and did there make discoveries of mining ground and locations thereof in the name of the plaintiff, the said J. F. Creel and the said A. W. Wells, and designated the same as the Summit, Calahan, Don Creel, Extension and T. F. T., and that

such discoveries [20] and locations were made in what is known as the Beveredge Mining District. These defendants deny that the lode mining claims mentioned and described in said sixth paragraph as having been respectively located in the names of Kate J. Wells and B. T. Robinson, Mrs. A. W. Wells and B. T. Robinson, and B. T. Robinson and Harold E. Robinson, or any of them were or was discovered or located by the said A. W. Wells. Defendants deny that the said A. W. Wells wrote all or any of the location notices placed upon said several mining locations last mentioned, or that he performed all or any of the preliminary acts of location upon all or any of said last mentioned locations, or that the said A. W. Wells had such locations or any of them, or the notices of such locations or any of them, filed of record at Independence, Inyo County, California. These defendants deny that the said A. W. Wells did or performed any act or things incident or requisite to the location of said mining claims last mentioned, or any of them, under or pursuant to Local Mining Rules and Regulations, laws of the State of California, or the laws of the United States, in relation to the discovery, location, and appropriation of the public mineral lands of the United States, or that the said A. W. Wells did or performed any work or labor or other act or thing in reference to or in aid of the discovery or location or appropriation of said last mentioned mining claims, or any of them.

IV.

Answering the eighth paragraph of said amended bill these defendants admit that Kate J. Wells and

Mrs. A. W. Wells are names of one and the same person and that this defendant Kate J. Wells was at all times mentioned in the amended complaint and is now the wife of A. W. Wells, and that Harold E. Robinson and B. T. Robinson are sons of the defendant Kate J. Wells and the stepsons of A. W. Wells, but these defendants deny that [21] defendant Kate J. Wells, B. T. Robinson or Harold E. Robinson were or at all knew that the said A. W. Wells at the times the several mining locations last mentioned, or any of them, were located, was working under a grubstake contract or agreement of said A. W. Wells with plaintiff and said Creel, or with either of them; and these defendants deny that said last-mentioned mining locations or any of them were discovered or located by said A. W. Wells, or that they or any of them were wrongfully and fraudulently, or wrongfully or fraudulently made in the names of defendant Kate J. Wells, B. T. Robinson and Harold E. Robinson in pursuance of a conspiracy entered into between or among the said A. W. Wells, Kate J. Wells, B. T. Robinson and Harold E. Robinson, or any two of them, or for the purpose of defrauding the said Turner and Creel or either of them, of their or his rights under said supposed contract, or their rights or the right or rights of either of them under any contract or otherwise accruing to them or either of them; and these defendants deny any conspiracy among or between the said A. W. Wells, Kate J. Wells, B. T. Robinson and Harold E. Robinson, or any of them, to wrong or defraud the plaintiff and his said assignor or either of them, or any person whomso-

ever, or that the plaintiff and his assignor or either of them were or was defrauded by any act or thing done by the said B. T. Robinson and Harold E. Robinson and the defendant Kate J. Wells, or by any of them, in and about the discovery or location of the mining claims last mentioned, or any of them, and in this behalf these defendants aver that each and every of said last mentioned mining claims was discovered by B. T. Robinson, the son of Kate J. Wells, and the same and each of them was and were located in the names of defendant Kate J. Wells and said B. T. Robinson jointly, and the said [22] B. T. Robinson and Harold E. Robinson jointly, for themselves and as their own property—to each as shown by the several notices of location—and that the said A. W. Wells had no part in the discovery and location of said last-mentioned mining claims or any of them; that said last-mentioned mining claims were not, nor were any of them discovered or located by reason of, or pursuant to, or under any prospecting or grubstake contract, arrangement, or understanding between the plaintiff and J. F. Creel on the one side, and A. W. Wells on the other, if any such contract there was at the times of the several discoveries and locations thereof; that the said A. W. Wells never at any time, had any estate, right or interest in or to the said mining claims last mentioned, or any of them; and that the plaintiff and J. F. Creel never had, nor do they now have any estate, right or interest, legal or equitable, in or to the said last-mentioned mining claims, or any of them. These defendants further aver that the said last-mentioned

mining claims were discovered and located by B. T. Robinson, the son of the defendant Kate J. Wells, and that during all of the time within which said discoveries and locations were made by said B. T. Robinson, and while he, the said B. T. Robinson was engaged in and about the prospecting for and discovery and location of said last-mentioned mining claims and every of them, the defendant Kate J. Wells solely at her own charges, furnished the said B. T. Robinson with provisions and other supplies consumed and used by him during said period of time and with such money as he required for his personal expenses, in value and amount aggregating the sum of \$565 or thereabout, and that said provisions, supplies and money were furnished said B. T. Robinson by the defendant Kate J. Wells pursuant to an understanding and agreement between them that they, the said B. T. Robinson and the defendant Kate J. Wells should share [23] equally in all mining claims discovered and located by said B. T. Robinson while the defendant Kate J. Wells should supply him with provisions and such other supplies as he might reasonably require while prospecting for mineral bearing lodes in the region and district aforesaid, and according to such understanding and agreement the said last-mentioned mining claims and each of them were and was located by the said B. T. Robinson in his name and the name of the defendant Kate J. Wells and in the names of B. T. Robinson and Harold E. Robinson, and that yearly ever since the location of said mining claims, so as aforesaid made by the said B. T. Robinson up to and in-

cluding the year 1912, the defendant Kate J. Wells or her lessee, the defendant Ironsides Mining Reduction and Leasing Company has performed annual labor and made improvements to amount and value required by the laws of the United States upon each and every of said mining claims at her or its own charges. Touching the allegations in said eighth paragraph by way of excuse and explanation of plaintiff's failure to assert until the beginning of this suit ownership of an interest in said mining claims, these defendants are without knowledge, save that the plaintiff and the said J. F. Creel were in the said Beveredge Mining District in the summer of 1907 and that they never have been residents of said mining district which these defendants admit.

V.

Defendants admit that the legal title to said mining claims and every of them is in the defendant Kate J. Wells.

VI.

Answering the 11th and 12th paragraphs these defendants deny that the plaintiff is the equitable owner of an undivided two-thirds interest in and to said Golden Rule No. 2, lode [24] mining claim, or in and to the Ironsides lode mining claim, under or by virtue of any contract or agreement or otherwise, and they deny that the plaintiff has any interest, legal or equitable, in either the Golden Rule No. 2 lode mining claim or the Ironsides lode mining claim.

VII.

Answering the thirteenth paragraph of said

amended bill defendants admit that defendant Kate J. Wells has worked, mined and extracted and sold some valuable ore and mineral from said lode mining claims, but deny that the extraction and sale of said ores and minerals worked any damage whatever to the plaintiff.

VIII.

These defendants admit that defendant Ironsides Mining Reduction and Leasing Company is working and *purposes* to continue to work the mining claims leased by it and that it is its purpose to extract therefrom mineral bearing ores, if such shall be found of sufficient value and in sufficient quantity to warrant the extraction and marketing thereof, but deny that such extraction and sale will cause any damage whatsoever to the plaintiff.

IX.

These defendants deny that any fraudulent representations whatsoever have been made by any officer or agent or by the defendant Kate J. Wells as to the title of the property leased by the defendant Ironsides Mining Reduction and Leasing Company from the defendant Kate J. Wells, or that any purchaser of said stock, if any shall be sold, will be defrauded out of his money by any misrepresentation as to title of the property so leased, or by any misrepresentation whatever. [25]

X.

Defendants deny that the defendant Kate J. Wells is insolvent or that she has no other property than said mining locations.

XI.

Touching the allegations of the seventeenth paragraph of said amended bill of complaint as to an assignment by J. F. Creel of all his right, title and interest in the supposed prospecting contract in the amended bill pleaded, these defendants are without knowledge and cannot admit or deny said allegations, except that they do deny that by such assignment, if any there were, there passed to the said T. F. Turner any right, title, estate or interest of any nature or kind whatsoever in said last-mentioned mining claims or any of them.

XII.

Further answering to said amended bill of complaint these defendants say that at the respective dates of location of the several mining claims last mentioned and described in the sixth paragraph of the amended bill—as to each at the date of its location—the defendant Kate J. Wells and the said B. T. Robinson went into possession of each and every the said mining claims except the Iron Max, and as to the latter, **the locators thereof and predecessors** in interest of the defendant Kate J. Wells, the said B. T. Robinson and the said Harold E. Robinson went into the possession thereof and since hitherto the defendant Kate J. Wells and her predecessors in interest have been in the exclusive possession of all and singular the said last-mentioned mining claims openly and notoriously asserting and claiming title thereto under the locations thereof by the said [26] B. T. Robinson as aforesaid, and the defendant Kate J. Wells from year to year and every

year since the location of said several last-mentioned mining claims at her own cost has performed and caused to be performed upon or for the benefit of said several mining claims and every thereof the annual labor and improvement required by the laws of the United States in relation to mining claims located upon the public mineral lands. And that after the location of said several last-mentioned mining claims and before the exhibiting of the plaintiff's bill of complaint, the defendant Kate J. Wells in addition to her expenditures for annual labor and improvement as aforesaid, paid out and expended large sums of money, to wit, many thousands of dollars in the exploration, development and improvement of the said mining claims; yet the plaintiff and the said J. F. Creel, plaintiff's assignor, although they and each of them well knew as early as the summer or fall of the year 1907 that the said several mining claims last hereinbefore mentioned had been located in the names of the defendant Kate J. Wells and the said B. T. Robinson and the said Harold E. Robinson on the several dates specified in the sixth paragraph of the amended bill of complaint and that the defendant Kate J. Wells and the said B. T. Robinson, her predecessor in interest, as to a moiety of each of said last-mentioned mining claims, save the Iron Max, and the said B. T. Robinson and Harold E. Robinson, her predecessors in interest as to said Iron Max, were in the possession of all and singular the said mining claims, asserting and claiming title thereto, and that the defendant Kate J. Wells at her own cost was performing the annual

labor upon said claims required by law and was expending large sums of money in the exploration, development and improvement of all said last-mentioned claims, asserted no title, right, claim or interest in the same or any thereof, or any part or parcel thereof, until [27] the exhibiting of plaintiff's bill of complaint in this suit on the 2d day of December, 1912, and these defendants submit to the judgment of this Honorable Court whether, the premises considered, the plaintiff is not now barred by his laches from the relief prayed by his amended bill, or from any relief in equity.

XIII.

And these defendants by protestation, not confessing or acknowledging all or any of the matters or things in the said amended bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, do plead in bar, and by way of plea say, that, if the plaintiff and his assignor, or either of them, ever had any cause of suit for or concerning any the matters and things pleaded in the said amended bill of complaint, which these defendants do in no sort admit, the same was barred at the time of the exhibiting of the plaintiff's original bill of complaint herein; and in this behalf these defendants further for plea say and do aver that the defendant Kate J. Wells and her predecessors in interest and grantors entered into and upon and took possession of all and singular the several mining claims last herein mentioned at the respective dates of their location as shown in the sixth paragraph of the said amended bill, under

claim of title and right of possession exclusive of all other right and ever since to the time of the beginning of this suit, a period of more than five years, were in the actual, open, notorious, continuous, exclusive and uninterrupted occupation and possession of the said last-mentioned mining claims and each and every thereof and every piece and parcel thereof, claiming and enjoying the same during all the time aforesaid in their own sole and exclusive right as the sole and exclusive owners thereof (acknowledging only paramount title in the United States) to their own sole and exclusive use and not otherwise.

[28]

And these defendants by protestation, not confessing or acknowledging all or any of the matters or things in the said amended bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, do further plead in bar thereunto and for further plea say, that the cause of action, if any there be, which these defendants do not admit, arising to the plaintiff on account of or by reason of the several allegations and complaints in his said amended bill contained did not accrue within three years next before the institution of this suit for that the plaintiff and his assignor, the said J. F. Creel, and each of them knew or ought to have known as early as the latter part of the year 1907, all and singular the acts and things done, and by whom done, in and about the discovery and location of the several mining claims which are the subject of this suit, and each of them, and all and singular the facts and circumstances relating

and pertaining to the discovery and location of the said last-mentioned mining claims and each thereof.

WHEREFORE, these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

S. E. VERMILYEA,

S. L. CARPENTER,

Solicitors for Defendants Kate J. Wells and Ironsides Mining Reduction and Leasing Company.

Received copy of foregoing answer this 2d day of June, 1914.

P. F. CARNEY,

WM. B. OGDEN,

Solicitors for Plaintiff. [29]

[Endorsed]: No. 45-Civil. In Equity. In the District Court of the U. S., for the Southern District of Cal., Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells and Ironsides Mining Reduction and Leasing Co., a Corporation, et al., Defendants. Answer of Defendants Kate J. Wells and Ironsides Mining Reduction and Leasing Company. S. E. Vermilyea, S. L. Carpenter, 1100-1002 Hibernian Building, Los Angeles, Calif., Attorneys for Defendants Kate J. Wells and Ironsides Mining Reduction & Leasing Co. Filed Jun. 2, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk, [30]

Minute Order of Court of Date, March 10, 1913.

*In the District Court of the United States, for the
Southern District of California, Northern
Division.*

IN EQUITY.**T. F. TURNER,**

Plaintiff,

vs.

**KATE J. WELLS, IRONSIDES MINING, RE-
DUCTION AND LEASING COMPANY, a
Corporation, Mrs. E. R. SHOOKMAN,
GEORGE L. ARNOLD and C. J. HECKMAN,
Defendants.**

**Order to Dismiss One Defendant, Mrs. E. B.
Shookman.**

This cause coming on to be heard on motion of Mrs. E. B. Shookman, one of the above-named defendants, to dismiss said defendant hence; and the motion having been duly considered, and it appearing that the plaintiff herein has failed and omitted to file a replication to the answer of said defendant, filed on the 2d day of January, 1913.

It is therefore ordered, in accordance with Equity Rule No. 66, that said defendant, Mrs. E. B. Shookman, is dismissed hence as party defendant in this action, with costs in her behalf incurred.

This order to be without prejudice to other parties in this action and to any proceedings heretofore had in this cause.

FRANK H. RUDKIN,

Judge. [31]

[Endorsed]: No. 45-Civ. In the District Court of the United States, for the Southern District of California, Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells, Ironsides Mining, Reduction and Leasing Company, a Corporation, Mrs. E. B. Shookman, George L. Arnold and C. J. Heckman, Defendants. Order to Dismiss One Defendant, Mrs. E. B. Shookman. Oliver S. Barnum, Solicitor, 519 Byrne Bldg., Los Angeles. Filed March 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy. [32]

At a stated term, to wit, the January Term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Courtroom Thereof, in the City of Los Angeles, on Tuesday, the Twenty-third Day of February, in the Year of Our Lord, One Thousand Nine Hundred and Fifteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. 45-CIVIL, NORTHERN DIVISION.

T. F. TURNER,

Complainant,

vs.

KATE J. WELLS et al.,

Defendants.

Minute Order of Court of Date, February 23, 1915.

This cause coming on this day for final hearing in open court: William B. Ogden, Esq., appearing as counsel for complainant; S. L. Carpenter, Esq., and

W. H. Anderson, Esq., appearing as counsel for defendants; John P. Doyle being present as shorthand reporter of the testimony and proceedings, and acting as such; now, on motion of William B. Ogden, Esq., of counsel for complainant, it is ordered that Ralph E. Esteb, Esq., who is present in court, be, and he hereby is associated with said William B. Ogden, Esq., as counsel for complainant; and S. L. Carpenter, Esq., of counsel for defendants, having moved the Court for a continuance of this cause for said final hearing; it is by the Court ordered that said motion for a continuance be, and the same hereby is denied; and counsel for complainant having presented their motion for the production on this final hearing of certain letters and documents, and counsel for defendants having represented that no such letters or documents exist, said motion is thereupon withdrawn by counsel for complainant; and S. L. Carpenter, Esq., of counsel for defendants, having suggested to the Court the death of George S. Arnold, [33] one of the defendants herein, now, on motion of said counsel for defendants, it is ordered that Belle W. Arnold, executor of the estate of said George S. Arnold, deceased, be, and he hereby is substituted as a party defendant herein in the place and stead of said defendant George S. Arnold; and S. L. Carpenter, Esq., of counsel for defendants, having moved the Court to dismiss the amended bill of complaint in this cause, which motion is argued, in support thereof, by S. L. Carpenter, Esq., of counsel for defendants, and in opposition thereto by Wm. B. Ogden, Esq., of counsel for complainant, and in

support thereof in reply by S. L. Carpenter, Esq., of counsel for defendants; it is ordered that defendants' said motion to dismiss the amended bill of complaint be, and the same hereby is denied; and, in support of the issues on his side, T. F. Turner, the complainant, having been called and sworn as a witness in his own behalf, and having given his testimony; and, in connection with the testimony of said witness, complainant having offered the following exhibits, which are admitted in evidence in his behalf, to wit: Complainant's Ex. "A," Letter of 6/30/07, Wells to Creel and Turner; Complainant's Ex. "B," Letter of 12/26/07, Wells to T. F. Turner; Complainant's Ex. "C," Notice of Location by A. W. Wells, dated 8/17/07; Complainant's Ex. "D," Notice of Location by A. W. Wells, of 8/17/07, Complainant's Ex. "E," Notice of Location by A. W. Wells of 6/28/07; Complainant's Ex. "F," Notice of Location by A. W. Wells, of 6/28/07; Complainant's Ex. "G," Notice of Location by Turner-Creel, of 6/10/07; Complainant's Ex. "H," Notice of Location by A. W. Wells, of 6/10/07; Complainant's Ex. "I," Notice of Location by J. F. Creel, of 6/10/07; Complainant's Ex. "J," Notice of Location by Turner-Creel, of 6/10/07; Complainant's Ex. "K," Letter of 5/1/08, Wells to Turner; Complainant's Ex. "L," Letter of 2/11/12, Wells to Turner & Creel; and Complainant's Ex. "M," Assignment of 5/15/12, Creel to Turner; and Court, at the hour of 12:30 o'clock P. M., having taken a recess until the hour of [34] 2 o'clock P. M., of this day;

And now, at the hour of 2:15 o'clock, P. M., court

having reconvened; and counsel and shorthand reporter being present as before; and T. F. Turner, the complainant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, complainant having offered the following exhibits, which are admitted in evidence in his behalf, to wit:

Complainant's Ex. "N," Certified Copy of Notice of Location of 8/1/07, by Benjamin T. Robinson; Complainant's Ex. "O," Certified Copy Notice of Location of 8/17/07 by Benjamin T. Robinson; Complainant's Ex. "P," Certified Copy of Notice of Location of 7/5/07, by Miss A. W. Wells; Complainant's Ex. "Q," Certified Copy of Notice of Location of 7/5/07, by Miss A. W. Wells; Complainant's Ex. "R," Certified Copy of Notice of Location of 6/25/07, by B. T. Robinson; Complainant's Ex. "S," Certified Copy of Notice of Location of 8/20/07, by Benjamin T. Robinson; Complainant's Ex. "T," Certified Copy of Notice of Location of 8/20/07, by Benjamin T. Robinson; Complainant's Ex. "U," Certified Copy of Notice of Location of 7/29/07, by Benjamin T. Robinson; and Complainant's Ex. "V," Certified Copy of Notice of Location of 6/29/07, by A. W. Wells; and complainant, further in support of the issue on his side, having called as witnesses Benj. F. Godfrey, Mrs. Delia Miles, W. B. Redfield and J. F. Creel, who are duly sworn and give their testimony; it is, on motion of W. H. Anderson, Esq., of counsel for defendants Geo. L. Arnold and C. J. Heckman, and with the consent of Wm. B. Ogden, Esq., of coun-

sel for complainant, ordered that this cause be, and the same hereby is dismissed as to said defendants Geo. L. Arnold and C. J. Heckman; and it is further ordered, at the hour of 5 o'clock P. M., that this cause be, and the same hereby is continued for further hearing until Wednesday, the 24th day of February, 1915, at [35] 10 o'clock A. M.

[Endorsed]: No. 45—Civil. United States District Court, Southern District of California, Northern Division. T. F. Turner, Complainant, vs. Kate J. Wells et al., Defendants. Copy Order Substituting Party Defendant; also Dismissing as to Defendants Arnold and Heckman. Filed Mar. 17, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [36]

In the District Court of the United States, for the Southern District of California, Northern Division.

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING REDUCTION AND LEASING COMPANY, a Corporation, MRS. E. R. SHOOKMAN, GEORGE L. ARNOLD and C. J. HECKMAN,

Defendants.

Final Decree.

This cause came on to be heard at the January, 1915, term at Los Angeles, conformably to stipula-

tion of parties, on the matters in issue between the plaintiff and the defendants Kate J. Wells and Ironsides Mining Reduction and Leasing Company (the other defendants—Mrs. E. R. Shookman by order of March 10, 1913, and George L. Arnold and C. J. Heckman by order at the hearing—having been dismissed out of said suit) and was submitted without argument by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the plaintiff's second amended bill of complaint do stand dismissed out of this court with costs for the defendants.

BENJAMIN F. BLEDSOE,

District Judge. [37]

Clerk's costs taxed at \$20.40.

Dated March 13, 1915.

Decree entered and recorded March 13th 1915.

WM. M. VAN DYKE,

Clerk.

By Leslie S. Colyer,

Deputy Clerk.

[Endorsed]: No. 45—Civil. In Equity. In the District Court of the U. S. for the Southern District of Cal. Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells and Ironsides Mining Reduction and Leasing Co., a Corporation, et al., Defendants. Decree. S. E. Vermilyea, S. L. Carpenter, 1100—1102 Hibernia Building. Los Angeles, California, Attorneys for Defendants. Filed Mar. 13, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [38]

Defendants' Exhibit 1.
GENERAL MERCHANDISE.
78108.

LE COUNT BROS., Co., INC.,
San Francisco, Cal.

Amt. of Acct.....15.98

Recd payment (16.00) June 8, 1907.

T. BOLAND EST.

Per J. R. BEAN.

(Small torn piece of paper attached, reading:)

June 7 1907

nson

s Boland

aler in

Part of Defd. Ex. 1-G.

BB. 997452. Wells Fargo & Co., Money Order.
Remitter's Receipt. Keep it. Amount of Order,
\$14. Sent to B. T. Robinson. Purchased by Kate
J. Wells. 10/14/07. In the event of delay or loss
of the order the amount will be refunded on pres-
entation of THIS RECEIPT and the execution of
an agreement to refund.

Los Angeles, Cal. ———(?) Street Branch.

Pt. of Defd. Ex. 1-G. (On rear). Part of Defd.
Ex. 1-G.

BB. 984475. Wells Fargo & Co. Money Order.
Remitter's Receipt. Keep it. Amount of Order,
\$10.00. Sent to T. Boland Estate. Purchased by
K. J. Wells, Los Angeles, Cal. Oct 5, 1907. In the
event of delay or loss of the order, the amount will

be refunded on presentation of THIS RECEIPT and the execution of an agreement to refund.

Part of Defd. Ex. 1-G. [39]

BB. 984474. Wells Fargo & Co. Money Order. Remitter's Receipt. Keep it. Amount of Order, \$50.00. Sent to T. Boland "Estate." Purchased by K. J. Wells, Los Angeles, Cal. Oct 5, 1907. In the event of delay or loss of the order, the amount will be refunded on presentation of THIS RECEIPT and the Execution of an Agreement to Refund.

[Endorsed]: Part of Exhibit No. 1-G.

Los Angeles, Cal., 7/29/1907, No. 18.
STATE BANK & TRUST CO.,
of Los Angeles.

Pay to the order of R. L. Craig & Co., \$33.95/100,
Thirty-three 95 Dollars.

KATE J. WELLS.

(Canceled.) Paid.

[Endorsed]: Part of Defd. Ex. No. 1-G. Clearing-house No. 10. Paid State Bank & Trust Co., Jul. 30, 1907. Through L. A. Clearing-house 10.

Los Angeles, Cal., 6/26/1907, No. 15.
STATE BANK & TRUST CO.,
of Los Angeles.

Pay to the order of Canfield Hardware Co.,
\$2 25/100, Two and 25/100 Dollars.

KATE J. WELLS.

[Endorsed]: Pay to the order of The Citizens National Bank, Los Angeles, Cal. Canfield Hardware Co. Pay only through L. A. Clearing-house. Jul.

31, 1907. 11. To the Citizens Nat'l Bank. Part of Defd. Ex. No. 1-G.

Clearing-house No. 10. Paid State Bank & Trust Co. Jul. 31, 1907. Through L. A. Clearing-house 10. [40]

Los Angeles, Cal., 4/12/1907, No. —.
STATE BANK & TRUST CO.,
of Los Angeles.

Pay to the order of Fairbanks Morse & Co., \$50 85/100, Fifty and 85/100 Dollars.

KATE J. WELLS.

Clearing-house No. 10.

[Endorsed]: Part of Defd. Ex. 1-G. Pay to the order of The American Natl. Bank of Los Angeles. Fairbanks, Morse & Co. Pay only through Los Angeles Clearing-house 8. Apr. 15, 1907. 8 to The American Natl. Bank. Paid.

Los Angeles, Cal., 4/11 1907, No. —.
STATE BANK & TRUST CO.,
of Los Angeles.

Pay to the order of R. L. Craig & Co., \$73 25/100, Seventy-three 25/100 Dollars. —

KATE J. WELLS.

Clearing-house No. 10.

OK. AR.

[Endorsed]: Part of Defd. Ex. 1-G. R. L. Craig & Co. W—.

(In pencil on back): 73.25
186.15

Paid Apr. 12, 1907. State Bank & Trust Co., Los Angeles. Cal.

Los Angeles, Cal., 4/12 1907, No. ——.
 STATE BANK & TRUST CO.,
 of Los Angeles.

Pay to the order of Union Hardware & Metal Co.,
 \$22.27/100, Twenty-two and 27/100 Dollars.

KATE J. WELLS.

Clearing-house No. 10.

[Endorsed]: Part of Defd. Ex. 1-G. Pay to the
 order of Merchants National Bank, Los Angeles, Cal.
 Union Hardware & Metal Co. A. Williams, Cashier.
 Paid through Merchants National Bank, Los An-
 geles, Clearing-house 5. (F.) Apr. 15, 1907. [41]

Los Angeles, Cal., 4/11, 1907, No. ——.
 STATE BANK & TRUST CO.
 of Los Angeles.

Pay to the order of Union Hardware & Metal Co.
 \$40.50/100, Forty and 50/100 Dollars.

KATE J. WELLS.

Clearing-house No. 10.

[Endorsed]: Part of Defd. Ex. No. 1-G. Pay to
 the Order of Merchants National Bank, Los Angeles,
 Cal. Union Hardware & Metal Co. A. Williams,
 Cashier. Paid through Merchants' National Bank,
 Los Angeles Clearing-house 5. Apr. 15, 1907. (F)
 1101 W. 1st St.

Oct. 4, 1907.

Received from Mrs. K. J. Wells Sixty Dollars on
 acct. Robinson & Wells \$60.00.

T. BOLAND ESTATE.

BEAN.

[Endorsed]: Part of Defd. Ex. 1-G.

Los Angeles, Cal., April 15, 1907, No. —.

STATE BANK & TRUST CO.

of Los Angeles.

Pay to the order of Dyas Cline Co. \$11.75/100,
Eleven and 75/100 Dollars.

KATE J. WELLS.

Clearing-house No. 10.

[Endorsed]: Part of Defd. Ex. No. 1-G. 1101
West 1st St. Pay to the order of Broadway Bank
& Trust Co., Los Angeles, Cal., Dyas-Cline Sporting
Goods Co. Paid. Pay only through L. A. Clearing-
house 14. Apr. 17, 1907. 14. To Broadway Bank
& Trust Co. [42]

Los Angeles, Cal., April 15th, 1907, No. —.

STATE BANK & TRUST CO.

of Los Angeles.

Pay to the order of R. L. Craig & Co. \$5.00/100
Five and no/100 Dollars.

KATE J. WELLS.

Clearing-house No. 10.

[Endorsed]: Part of Defd. Ex. No. 1. Pay to the
order of First National Bank of Los Angeles, Cal.,
R. L. Craig & Co. Paid Apr. 16, 1907. First Na.
tional Bank. Los Angeles Clearing-house 3 M. 2.

Keeler, Cal., May 24th, 1907.

M. B. T. Robinson to Thomas Boland, Dr., General
Merchandise, Full Line of Mining Supplies
Always on Hand, Boots and Shoes, Hats and
Caps, Complete Stock of Gents' Furnishings,
Keeler, Inyo Co., Cal.

1907.

Apr. 28.	Mdse. as per Bill.....	4.62
May 4.	“ “ “ “	8.60
“ 10.	“ “ “ “	2.00
“ 13.	“ “ “ “	1.35
		<hr/>
		16.57

May 17th, 1907.

Received payment in full.

T. BOLAND ESTATE,

Per J. R. BEAN.

[Endorsed]: 45-Civ. Turner & Wells. Defd's.
 Exhibit No. One. Filed Febry. 24, 1915. Wm. M.
 Van Dyke, Clerk. By T. F. Green, Deputy. [43]

*In the District Court of the United States, Southern
 District of California, Southern Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS et al.,

Defendants.

**Condensed Statement of Witness' Testimony in
 Narrative Form.**

The following comprises a statement of the testimony of witnesses examined on the trial of the above cause in narrative form, essential to the decision of the questions presented by the appeal, as follows:
 [44]

Testimony of T. F. Turner, in His Own Behalf.

T. F. TURNER, plaintiff herein, testified in his own behalf, in substance, as follows:

I am the plaintiff in this cause. I resided in Rhyolite, Nevada, in 1907, and became acquainted with J. F. Creel at that place about January, 1907, and some time in the following February became acquainted with A. W. Wells. I met him in Creel's cabin. Creel and I were batching together. Wells was a prospector and miner. Wells talked much of prospecting and wanted Creel and myself to grubstake him on a prospecting trip. Creel and I agreed to grubstake Wells and did so, furnishing him with mule team, wagon, outfit, provisions and money. He wanted to take his step-son, Burgess T. Robinson, with him, but we refused to include him in the grubstake contract because he was not of age. Wells however, was to take him with him on his own account, and settle with him out of his proceeds in the grubstake contract. The grubstake contract was oral. There were present at the making of this grubstake contract a Mr. Smith, a man by the name of Whitney, B. T. Robinson, Creel and myself. Under the grubstake agreement Wells, Creel and myself were to share equally, one-third each, Burgess Robinson, the step-son, was to accompany Wells, and Wells was to remunerate him out of his share. They were to go into California and prospect for gold and other precious metals, and all discoveries were to be located as claims in the names of Wells, Creel and myself. This contract was made between us in March,

(Testimony of T. F. Turner.)

1907, and Wells and Robinson left for California about the 2d, 3d or 4th of following April, 1907. They were destined for a locality in the neighborhood of Keeler, Inyo County, California. [45]

(The above evidence as to the grubstake contract was objected to by defendants because they were declarations against wife, objection overruled and an exception allowed defendant.)

We received letters from Wells enroute, and after he arrived at Keeler, California. We heard from him frequently and sent him money from time to time, as often as he asked for it. At times I sent him money, other times he would write for it and at other times I sent him money by Mr. Creel.

I next saw Wells the latter part of July about the 22d or 23d, 1907, and he stated that he had left Burgess Robinson at work over where they had been prospecting, monumenting our claims.

(The statement as to Burgess Robinson being left at work was objected to by defendants because there was no allegation to connect Burgess Robinson with the grubstake contract. Objection overruled, and an exception allowed defendant.)

Wells remained two or three days and returned to Keeler, California. After that he wrote us every week. In one letter he enclosed us the location notices of the following claims: T. F. T., Don Creel, Stone, Callahan and Summit. He sent others, the Black-metal, Combination and Sunset.

(Letter enclosing location certificates objected to by the defendants as incompetent and irrelevant, ob-

(Testimony of T. F. Turner.)

jection overruled and exception allowed defendants.)

These location certificates were in the handwriting of Burgess Robinson. Wells wrote letters relative to the contract, showing the existence of friendly relations, up to as late as May 1, 1908. I was at Camp Burgess about the 18th or 20th of September, 1908. Wells wrote me to come and take the mules away. M. C. Kyle Smith went with me. I paid bill for mules' keep and sold them. Wells, Smith and myself went on the claims located in the names of Creel, Wells and myself. Smith was a mining expert. I did not think the showing sufficient to justify an [46] expenditure of more money. Smith said to Wells, "There are those other claims that you showed me, the Ironsides and the Ketchem Mack." * * * "If those were in that group I could report favorably upon the property." Wells said, "I can't do that, Turner, those claims have been located by my wife for six years."

(The foregoing statement of Wells as to properties having been located by his wife for six years, objected to by defendants, because any statement or declarations of Wells regarding the property involved in this controversy could not be admissible, Objection overruled and an exception allowed defendants.)

That ended the conversation and I left for Tonopah, Nevada, and never returned to Inyo County, California. In the fall of 1911, in Nevada, I overheard a conversation and asked some questions the answers to which indicated that Wells was interested

(Testimony of T. F. Turner.)

in valuable claims near Keeler which were understood to have been located on a grubstake.

(The foregoing conversations objected to by defendants as irrelevant and immaterial and that defendants cannot be bound by conversations heard somewhere in Nevada,—objection overruled. The Court admitted the conversations solely to show the first intimation of fraud and as exculpating the plaintiff from the charge of undue delay or laches which had been urged against him. An exception was allowed defendants.)

I immediately wrote Creel at Tucson, Arizona, and sent him money to go to Inyo County, California, and investigate.

(The statement that Turner sent Creel money to look up the records, objected to as incompetent, irrelevant and immaterial. Objection overruled and exception allowed defendants.)

I met Creel afterwards. He had been to Inyo County, California, and he brought me a letter from Mr. Wells, as follows: [47]

**Plaintiff's Exhibit "L"—Letter of 2/11/12, Wells
to T. F. Turner and J. F. Creel.**

Lone Pine, Calif., Feby. 11th, 1912.

Mr. T. Frank Turner,
Boston,
Mass.

Mr. J. F. Creel,
Los Angeles,
Cal.

Gentlemen:

Pursuant to your request regarding the grubstake agreement had between yourselves and myself I herewith attached a complete statement of our relations with each other as relates to that agreement and the carrying out of the same.

That on or about the first day of March, 1907, I came down from Goldfield to the home of J. F. Creel in Rhyolite, and remained there *for* a period of days with him, being at the time badly troubled with the rheumatism in one of my legs.

During my stay there with him we talked many times of the possibilities of mining and the chances a person would have in some country in California in which I had had quite a little experience, and that upon the many occasions with Mr. Turner, Mr. Creel and others present, viz., E. Prichard Smith, Mr. Gad-fry, Major C. W. Callahan and Ed. Whitney, relative to my going into the field to discover some ground containing mineral in the interest of yourselves and myself.

That it was finally agreed verbally between us and

in the presence of the above-named parties and on occasions of others that I would go out for you provided you furnished me with a proper means of travel and that I would prospect and explore the country to the best of my ability and at all times [48] to the interest of the three of us connected with the same, no limit of time being set upon the length of time of the life of the grubstake or agreement.

That it was finally agreed that you would secure and later did secure a two mule team and light road wagon in which I was to start on the trip, that you also provided equipment and tools, feed and supplies for myself and team.

That then came the question of taking Burgess Robinson along to help me in my work to carry out my agreement with you, and which was consented to by both of you. I went to Chloride Cliff in Inyo County, Calif., on the Funeral Range of Mountains and there explained to the said Burgess Robinson in detail regarding the trip and he was agreeable to the same and at once accompanied me to the home of J. F. Creel in Rhyolite, Nevada, and it was further agreed in the presence of ourselves and several of the above-named witnesses that Burgess Robinson was to accompany me on the trip to help me.

That it was also understood and agreed that the terms of the agreement was not altered except that Burgess was not to participate in the same only to the extent of whatever interest I myself might obtain from whatever was discovered or located.

That the fact being known at the time by all concerned that the said Burgess Robinson being my son

in law by marriage to Kate J. Robinson and the further fact that he being a minor under the age of twenty-one years of age, the matter of making an agreement with a minor not seeming possible we would not make him a party to the agreement otherwise than stated. [49]

That during the later part of March, 1907, after everything was in readiness, we picked up A. I. Warren, then of Lees Camp, Inyo County, California, who accompanied us as far as Skidoo, Calif., on agreement to secure an option on a lead and silver property then owned by one John Lamoine, and if possible to proceed to Los Angeles, or any other place and to dispose of the same for the benefit of himself and the ones connected with this agreement.

That on or about the 19th day of March, 1907, we took leave of your presence and proceeded forth to prospect and discover and otherwise secure mineral rights by any means possible and legal, but always to the interest of the parties connected with the agreement.

That we proceeded across the Death Valley stopping at Skidoo, California, for a short time where we left A. I. Warren and Burgess Robinson and myself proceeded through the way of Ballerat, Warwin to Keeler, Calif., and from there into the White Mountains by the way of Swansea, a station of the N. & C. R. R., and then and there prospected for mineral ground, that we discovered and located several claims near to the station of Swansea known as the Combination, Black Meatl, Sunset, and the

South Extension of the Black Metal, notice of which was made and later recorded in the office of the County Recorder at Independence, Calif.

That we then proceeded further into the mountains and there discovered numerous claims on the summit of the mountains and in what is known today as the Camp of Burgess.

That we located in the names of J. F. Creel, T. F. Turner, and A. W. Wells, the claims known and recorded as the Summit, Callahan, Don Creel, T. F. T. and the Extension, said claims being in the Canyon known as the Craig Canyon through which [50] passes the well known Hunter trail.

That on June 7th, 1907, we located and discovered what is known as the Golden Rule No. 2, as shown in the Mining Records in Book "Z," page 510, in the Office of the Recorder at Independence, Inyo county, Calif.

That on the 8th day of June, 1907, we discovered and located the claim known as the Golden Rule No. 3, as recorded in the Recorder's office at Independence, Inyo County, Calif., in Book "1," page 274.

That on June 22d, 1907, we discovered and located the claim known as the Ironsides, and recorded in book "Z," page 509, in the office of the Recorder at Independence, Inyo County, Calif.

That on June 22d, 1907, we also discovered and located the claim known as the Catch-em-Mac as shown of record in book "1," page 276, in the Recorder's office at Independence, Inyo County, Calif.

That on the 15th of July, 1907, we discovered and located the claim known as the Grand View, as

shown of record in book "1," page 545, in the Recorder's office, at Independence, Inyo County, Calif.

That on July 29th we discovered and located the claim known as the Kate J., as shown of record in book "1," page 546, in the Recorder's office of Independence, Inyo County, Calif.

That on August 1st, 1907, we discovered and located the claims known as "Garnet Fraction" as shown of Record in the Recorder's office at Independence, Inyo County, California, in book "1," page 545.

That on August 17th, we discovered and located the claims known as the Golden Rule No. 1, as shown book "1," page 547 in the Recorder's office at Independence, Calif. [51]

That on July 29th, 1907, we discovered and located the claims known as the Golden Rule No. 1, as shown in book "6," page 578, in the Recorder's office at Independence, Inyo County, Calif.

That on July 29th, we further located the claim known as the Protection No. 1, as shown in the records of the Recorder at Independence, Inyo County, Calif.

That we also located and discovered at and during this period of time the claim known as the Braca Bronco, a record of which I have not now in my possession.

That at no time from the beginning of this agreement prior to August, 1907, was Kate J. Wells on the claims now in the County of Inyo, Calif., but that sometime about the 1st of August, 1907, or during that month she arrived from Los Angeles and made

her first appearance on the hill.

That Harold E. Robinson arrived on the Hill during the month of June, 1907, and was not in any way connected with this agreement nor in the location of these claims.

That at no time for several years prior to our arrival on the hill, as stated, was any of these claims located by myself or any one of the present occupants, in whose names they appear.

That during the location of the Kate J. claim there arose quite an argument between Kate J. Wells and Burgess Robinson, and I said this is too much for me so I started for the Camp to get away from the argument, and in going over the ground I remember stumping my foot over an outcrop and kicked off a piece of the rock, and upon examining the same I found it to be well mineralized and that when they arrived at the Camp after making up I said to them, while you folks were fussing I made a discovery [52] and showed it to them and they went up in the air about it, and we then went back and located the claim and did some work on it.

That to my certain knowledge in this case the location notice was dated back to suit the occasion and the circumstances.

That all claims were located in the names of Kate J. Wells, Mrs. A. W. Wells and Burgess Robinson, my name not appearing on any of them, and that in every instance where the name appears as Mrs. A. W. Wells I personally wrote the location notice myself.

That in making this statement to you I have not

been offered nor have I received any remuneration of any kind from either of you, and it is only done with the intent and purpose of putting you in a proper position to secure your rights under the agreement on the hill, to which so far you have been wrongfully detained.

And further that I will be willing and will at any and all times make oath to the effect that every word here is true, if called upon to do so, and will appear in any Court of Record and give the facts as they exist to my best recollection and belief.

Yours truly,

(Signed) A. W. WELLS. [53]

(The above letter offered and received in evidence objected to by defendants as incompetent and irrelevant, having no tendency to prove the issues and because it *w* is a declaration of Wells long after the transaction, and a declaration in his own interest and a declaration of the husband which cannot be used against the wife, objection overruled and letter admitted solely for the purpose of showing the existence of the grubstake contract. Defendant excepted and an exception allowed.)

I first met Mrs. Kate J. Wells in January, 1913, in the Hollenbeck Hotel. We discussed this suit which was being brought, she asked if I had a suit for an accounting and I said I had. "Well," she said, "Mr. Turner I had rather have you for a partner than my husband," and stated if I got all that belonged to me up there I would have pretty nearly all the hill.

I sent Wells between \$2,100 and \$2,300 all told from the time I bought the mules up to the 4th day

of May, 1908, and paid the bill for the mules when I went up. Prior to the bringing of this action I purchased Mr. Creel's interest in the property in controversy, and took his assignment thereof (which is offered in evidence and admitted). [54]

Mr. Ogden, on behalf of plaintiff, here offered in evidence the location certificates to the lode mining claims described in plaintiff's Second Amended Bill of Complaint, located in the Beveridge Mining District, Inyo County, State of California, as follows:

Ironsides claim, located June 22, 1907, recorded in book C, page 509, records Inyo County, California, said location having been made in the name of Mrs. A. W. Wells and B. T. Robinson; Iron Max claim, located June 28, 1907, recorded in book 1, page 277, records Inyo County, California, said location having been made in the names of B. T. Robinson and Harold N. Robinson; Beveredge Belle claim, located August 17, 1907, recorded in book 1, page 547, records Inyo County, California, said location having been made in the names of Mrs. Kate J. Wells and B. T. Robinson; Catch-em-Mac claim, located June 22, 1907, recorded in book 1, page 276, records Inyo County, California, said location being made in the names of Mrs. A. W. Wells and B. T. Robinson; Garnet Fraction claim, located August 1, 1907, recorded in book 1, page 545, records of Inyo County, California, said location being made in the names of Mrs. A. W. Wells and B. T. Robinson; Golden Rule No. 1 claim, located July 29, 1907, recorded in book 6, page 587, records of Inyo County, California, said location having been made in the name of Mrs. A. W.

Wells and B. T. Robinson; Kate J. claim, located July 29, 1907, recorded in book 1, page 546, records of Inyo County, California, said location having been made in the name of Kate J. Wells and B. T. Robinson; Golden Rule No. 2 claim, located June 7, 1907, recorded in book 2, page 510, records of Inyo County, California, said location having been made in the names of Mrs. A. W. Wells and B. T. Robinson; Golden Rule No. 3 claim, located June 8, 1907, recorded in book 1, page 274, records of Inyo County, California, said [55] location being made in the names of Mrs. A. W. Wells and B. T. Robinson; Grand View claim, located July 15, 1907, recorded in book 1, page 545, records of Inyo County, California, said location having been made in the names of Mrs. A. W. Wells and B. T. Robinson; Protection No. 1 claim, located July 29, 1907, recorded in book 6, page 589, records of Inyo County, California, said location being made in the names of Mrs. A. W. Wells and B. T. Robinson.

Each of the above located certificates, with the exception of the Iron Mac and the Golden Rule No. 1, were witnesses by A. W. Wells and recorded with the recorder of Inyo County, California, at the request of said A. W. Wells. [56]

Testimony of Benjamin T. Godfrey, for Plaintiff.

BENJAMIN T. GODFREY, a witness for plaintiff, testified in substance as follows:

I reside in Seattle, Washington, and am mining engineer. I resided in Rhyolite, Nevada, in 1907, and knew plaintiff Turner and was well acquainted

(Testimony of Benjamin T. Godfrey.)

with J. F. Creel and lived with them. While with them I became acquainted with A. W. Wells, a prospector. I was present and heard certain conversations between Wells, Turner and Creel. Turner and Creel were to grubstake him and pay all bills and Wells, Turner and Creel were to have a one-third interest each in whatever Wells discovered. Mr. Turner agreed to buy an outfit. I knew Burgess T. Robinson when Turner and Creel decided to send Wells out to prospect. Wells did not want to go alone and wanted to take Robinson. Turner and Creel agreed providing Wells was to share with Robinson on his portion. It was agreed that Turner, Creel and Wells were to have one-third interest each in the presence of Burgess Robinson and it was agreeable to him. I was in Rhyolite when Wells came back in July, 1907. He was alone.

Cross-examination.

I came to Los Angeles last night at Mr. Turner's request and he is paying my expenses while here. The conversations I refer to took place in the evening, some time the first part of March, 1907. I saw the outfit leave Rhyolite. It consisted of two mules, one a gray mule, a light *right* wagon. I helped load it with groceries—flour, beans, bacon and usual camp stuff. It was a pretty good sized grubstake. [57]

Testimony of Mrs. Della Miles, for Plaintiff.

Mrs. DELLA MILES, witness for plaintiff, testified in substance as follows:

I am housekeeper at Baltimore Hotel in Los

(Testimony of Mrs. Della Miles.)

Angeles, California. I resided in Los Angeles in 1907, and was acquainted with defendant, Kate J. Wells.

In the Spring of 1907, Mrs. Wells came to my house and said some parties in Rhyolite had furnished an outfit for Wells and Burgess to go up to the camp and she had instructed them to locate everything up there. (This last paragraph objected to by defendant's counsel. Objection overruled and an exception allowed).

I will get you to state if you saw Burgess Robinson after you went up there, shortly after the 12th of July.

I saw him every day.

Did you have any conversation with Burgess Robinson in relation to the grubstake contract between Wells and Creel and Turner?

A. I did.

State what that was, Mrs. Miles.

Mr. CARPENTER.—Now, we object, if the Court please, on the ground that it is entirely irrelevant and immaterial, and purely hearsay; nothing that could be said by Burgess T. Robinson would bind the defendant Kate J. Wells, or the Ironsides Mining & Leasing Company, or any of the defendants in this case. * * *

The COURT.—B. T. Robinson appears to have been one of the locators in each one of these claims, and therefore, presumably, a half-owner in each one of the claims in question, and I apprehend that any statement or admission with respect to the title

(Testimony of Mrs. Della Miles.)

made by him while he was the owner of the claim would be competent against a subsequent grantee. That is my understanding of the law. The objection is overruled. Exception allowed. [58]

By Mr. ESTEB.—You may state what that conversation with Burgess T. Robinson was.

This conversation was along, I should say, the first of September. I came up the 12th of August and this must have been about the 1st of September, after I came there. There had been some trouble down to the camp, and Burgess came up and said that he was going to get out of there, that Wells and his mother was raising so much fuss that Creel and Turner would come in and take the whole thing anyhow as soon as they heard of it.

Mr. ANDERSON.—I move to strike that out as not responsive to the question.

The COURT.—Yes, it will be stricken out. It is immaterial. To the striking out of the above conversation by the Court defendant excepted and exception allowed.

Testimony of W. D. Redfield, for Plaintiff.

W. D. REDFIELD, a witness for plaintiff, testified in substance as follows:

I reside in San Francisco. I resided at Camp Burgess in 1909, and worked for Mr. Robinson and Mrs. Kate Wells. I had a conversation with Mrs. Kate Wells in 1909 in which she told me that she was in Los Angeles when Wells and Burgess left Rhyolite, Nevada, and that Burgess was not known in the grubstake contract with Creel and Turner.

(Testimony of J. F. Creel.)

I had another conversation with Mrs. Wells in 1910 about the time Mr. Warren and Wells brought suit against Mrs. Wells and she said, "They say they are going to break me, and if Warren don't win this suit Turner and Creel will come in. Wells will never get a cent out of this mine as long as I am here. I would rather Creel and Turner would have it than have Wells to have a nickel of it." [59]

Testimony of J. F. Creel, for Plaintiff.

J. F. CREEL, a witness for plaintiff, testified, in substance, as follows:

I reside in Bakersfield, California, and am working for an oil company. I resided in Rhyolite, Nevada, in 1907, and first became acquainted with T. F. Turner in January of that year. Turner lived with me in a two-room house. We lived together for a year or two at Rhyolite and Tonopah. Was acquainted with A. W. Wells. I met him at Rhyolite. He lived at my house while in Rhyolite. Mr. Turner and I had several conversations with Wells in which we agreed to grubstake him on a prospecting trip to California. We were to share equally as to what he should find on the prospecting trip. Turner and myself were to and did furnish outfit, grub and money at intervals as he needed them. Wells said he did not want to go to the mountains along and wanted to take Burgess Robinson, his stepson, with him. I stated to Burgess Robinson that he was not a part to the contract, and that he had no share in it except as to the share of Wells,

(Testimony of J. F. Creel.)

and Robinson said he understood that, and that it was satisfactory to him.

They shortly left Rhyolite for Inyo County, California, and we heard from them enroute from Ballerat or Darwin and Skidoo, and quite often from Keeler after their arrival in Inyo County, California.

Wells returned to Rhyolite about the 23d of July, 1907, at my request, bringing samples of ore with him. Wells remained two days and returned to Keeler, Inyo County, California.

I next saw Wells at Keeler the first part of September, 1907; and we went to Camp Burgess.

I am acquainted with Mrs. Wells, met her in 1908, and had a conversation with her in the presence of Wells, in relation to the claims in controversy, and she said, "Creel, I want to tell [60] you that one corner of your Don Creel claim overlaps my Beverage Belle," and I replied, "Mrs. Wells, I don't know anything about that, the monuments on the Don Creel or any of the rest of the claims. Mr. Wells located these claims, and you will have to talk to him about that," and she replied, "Yes, but he did it while he was out for you and Turner." She said Wells located the claims while he was out for us. I remained until the last of September.

I next saw Wells about the 10th or 11th of February, 1912. I went to see him at Turner's request, and met him at Lone Pine, California, and had a conversation with him in relation to the manner in which he had carried out his grubstake contract with us. I identify the instrument shown me. (Plain-

(Testimony of J. F. Creel.)

tiff's Ex.) It was written by me and signed by A. W. Wells in my presence.

Cross-examination.

When Wells started out we paid about four hundred ninety dollars. We expended about five hundred fifty or five hundred sixty dollars when Wells left Rhyolite. We heard from Wells while on the way. After his arrival at Keeler we sent him money at times when he would write for it. I sent him some before June 30, and he asked for money in nearly every letter, and received it every time he asked. We sent money by postoffice order, express order and registered mail. Sometimes I took it to him. I was working in wholesale liquor concern in Rhyolite. I had been with them two or three weeks when Wells left. I had been bookkeeper for Clark Brothers. I had lived in Rhyolite since September, 1906. Was married. I had resources outside of my salary. I cannot fix the exact day of my arrival in Keeler. Mr. Wells was there, and Mrs. Miles. [61] I was not working when I made my first trip to Keeler. I went over the hill and looked at the properties—Ironsides, Beveridge Belle and Iron Max. Wells said the claims belonged to Kate. I went back again the 15th day of June, 1908.

Redirect Examination.

When I was in Keeler in September, 1907, I gave Wells some money and he paid grocery bill at Boland Estate store. He said it could be credited on either his account or that of Burgess. Wells told

(Testimony of J. F. Creel.)

me that it was all the same that both accounts were the same. At this time Burgess asked Wells if he was going to work for Kate or for Turner and Creel. Wells said he was going to work for Turner and Creel, that they had sent us over there and were sending them money. They went away and shortly returned. The conversation was renewed and Burgess agreed it would not be right to turn Turner and myself down at this time, because we had sent them there and were furnishing them with money. This conversation was at Keeler, the latter part of September, 1907.

(It was stipulated by the parties that A. W. Wells died September, 1914.)

(The instrument dated February 11, 1912, marked exhibit "L" was here offered in evidence *for all purposes*, having been identified by witness Creel, and objected to by counsel for defendant, Kate J. Wells, as follows:

"The first objection is that the document purports to be a statement of A. W. Wells, made out of the presence of his wife, and, as a statement of the husband, may not be used in evidence as against his wife without her consent; second, that, as a declaration of a conspirator, no conspiracy has been shown; and third, that, assuming that a conspiracy has been shown, it is a declaration made long after the object of the supposed conspiracy had been reached and is merely a statement of narrative [62] or history of a past event, which is not admissible in evidence against even a co-conspirator. The objec-

(Testimony of Kate J. Wells.)

tion was sustained by the Court upon the third or last ground of the objection and the written instrument excluded as evidence, to which ruling of the Court plaintiff, by counsel, excepted, which exception was by the Court allowed.)

Testimony of Kate J. Wells, for Defendants.

KATE J. WELLS, a witness sworn on behalf of defendants, testified as follows:

My name is Kate J. Wells. I am one of the defendants in this action. I was the wife of A. W. Wells. We were married April 20, 1900, in San Francisco. I was the mother of Burgess Robinson. Burgess Robinson died February 1st, 1908.

I know the region in which the mining claims, which are the subject of this controversy, are located. We owned property in there in 1890. I was in there in 1890. My son Burgess and I were in there in 1900 and 1901. We located the Columbia claim at that time. I was there in April, 1906, with my son Burgess. We located four claims. One or two other persons were there. Mr. A. W. Wells was not there; he was in Los Angeles.

I am familiar with the ground known as the Ironsides claim and the Iron Max and Beveredge Belle and surrounding claims mentioned in the complaint. I first observed the ground now known as the Ironsides claim in 1902. I observed it in 1906. My son was with me at that time. Nothing was done in regard to the Ironsides claim at that time, only to select the name. We intended to locate the Ironsides claim in 1906, but when we returned to Keeler for

(Testimony of Kate J. Wells.)

some supplies we heard of the earthquake in San Francisco—heard that Los Angeles was destroyed and we came here hurriedly. My mother and two sisters and brother [63] were here at the time. That is why we didn't locate the Ironsides at that time. We had the name selected—the Ironsides mine.

After our return to Los Angeles Burgess went to Chloride Cliff to work for Mr. Mitchell. He went to Nevada about September 30, 1906, I think. My son and I had an agreement before we went up in 1906. I did not know Mr. Creel or Mr. Turner in 1906. I wrote to Burgess in regard to going to this district (where the claims involved are situated)—that I wanted to send up an outfit to do the work on the Mahogany Grove. I do not know when he went; I think in the latter part of March or it might have been in April, 1907. During the period of May, June and July of 1907, I furnished supplies to my son Burgess, aggregating something like \$340—an outfit of tents, stoves, drills, hammers, picks and everything of that description pertaining to a mining outfit; from Craig & Company, \$73.22—something like that; Union Hardware Company, \$40.; Fairbanks, Morse & Company, \$50; another bill from Craig, \$5; Union Hardware Company, \$11.75; and in April I sent him \$10 and \$3 for recording our claims. I sent him some money to pay a bill of \$16 for groceries he had got as soon as he got into Keeler; and a number of other items here; \$25 cash later on. Burgess secured supplies for himself

(Testimony of Kate J. Wells.)

while he was up there from Keeler and I paid his bills. The supplies were obtained from the Tom Boland estate. I paid a bill of the Tom Boland Estate of \$60 in October for supplies that had been obtained by Burgess; also bills of \$2.80 and \$6.50 to Dyas.

Q. I hand you a paper in the form of a receipt and ask you if that is the receipt which you received for the money which you paid to the Boland Estate (handing paper).

A. Yes, sir. This is October 4.

Q. What kind of business was Boland doing in Keeler? [64] A. General merchandise.

Q. I hand you a slip purporting to be a receipt for \$16 on June 8, 1907, from the Boland Estate.

A. Yes, sir.

Q. Did you pay that money?

A. Yes, sir, I paid it.

Q. What was that for?

A. Groceries. The groceries that I sent to him from Craig & Co. were delayed at Keeler; they were delayed there, and he went to the Boland store and received these things to live on until his things came from Craig & Company.

Q. I hand you four stubs of Wells, Fargo & Company money orders, apparently, and ask you what those represent. (handing papers).

A. That is one for \$14 to B. T. Robinson, it was a bill that was paid.

Q. To whom was the money sent?

A. B. T. Robinson, my son.

(Testimony of Kate J. Wells.)

Q. Sent directly to him?

A. Yes, sir. And here of \$10 to the Boland Estate October 3, and another one for \$50 to the Boland Estate, being a total of \$60.

Q. Is that the same money represented by this receipt for \$60?

A. Yes, sir. I don't see this date (referring to one of the bills); I think that was in 1908, that \$50 to Mr. Wells.

Q. Very well. We will not offer that. That was later.

A. On July 3 I sent Burgess \$15 and also \$20 in 1907.

Q. I hand you a document purporting to be a check on the State Bank & Trust Company, bearing date July 29, 1907, in favor of R. L. Craig & Co. Does that represent some of the money which you have testified as having been paid to R. L. Craig & Company?

A. Yes, sir. This is another bill of \$33 that I took up with me when I went in July. Yes, I paid for this myself. And [65] here is this \$300 one (handing paper to counsel).

Q. I find another check here drawn in June. I will ask you to look at that and see whether that was for supplies for your son (handing paper).

A. Yes, sir. Yes, that was for some of the things, I think, canteens or something of that kind.

Q. That is the Canfield Hardware Company, \$2.25? A. Yes, sir.

Q. I will ask you to look at this bill, or this check,

(Testimony of Kate J. Wells.)

and ask you to state whether or not that was for supplies for your son.

A. Fairbanks, Morse & Company, yes, for hardware and so forth, \$50.75, that I bought to send to the camp.

Q. And it was sent up to that camp?

A. Yes, sir; it was sent to Burgess Robinson.

Q. And I show you another which was on April 15, 1907, which antedates these locations somewhat.

A. This is for a tent and canteens and mail-bag, or something like that; I sent them to Burgess.

Q. That is, you were sending them up to Inyo County, to Burgess?

A. I was sending them to Inyo County to be used at the camp.

Q. And here is another, R. L. Craig, which was paid in October of that year (handing paper).

A. Yes, sir.

Q. Was that for supplies?

A. No, this is 4/11, \$73.25. That was for provisions that I sent up to my son.

Mr. CARPENTER.—That Dyas-Cline check was \$11.75. I will offer this in a few minutes, unless counsel desires that they should be offered separately.

Q. Now, here is one bearing date the 12th of April, in favor of the Union Hardware & Metal Company (handing paper). [66] A. Yes, sir.

Q. Was that for supplies?

A. That was for supplies also.

Q. At the time that you purchased these supplies

(Testimony of Kate J. Wells.)

in April, 1907, did you then know your son's purpose to go to the camp or to go to this country?

A. I wrote my son in Nevada to go, that I was getting the outfit to send to do the assessment work on the claims previously located, and also to locate the Ironsides.

Q. And you were getting supplies to forward to him for his use when he reached there?

A. For his use, yes.

Q. Here is a check for \$40.50 to the Union Hardware & Metal Co. drawn in April, 1907 (handing paper).

A. Yes; I have an itemized account some place that I could tell what this is for; but this is my check, and I gave it to the Union Hardware Company for supplies.

Q. Sent up to Inyo?

A. Sent up to Inyo County.

Q. Here is a small check to R. L. Craig & Company dated April 15, 1907. Was that for the same purpose?

A. Yes, that was the \$5 I mentioned a while ago.

Q. I hand you a paper purporting to be a receipt dated May 24, to merchandise, bill to B. T. Robinson from the Boland Estate (handing paper). Do you know who furnished the money to pay that bill?

A. I did.

Q. Approximately how much money did you furnish Burgess or how much in money did you furnish—how much did it amount to—the supplies and money you furnished to Burgess during the spring

(Testimony of Kate J. Wells.)

and summer of 1907?

A. I think it amounted to \$500 or \$600, and perhaps more than that. I think it was between \$500 and \$600. At that time the [67] freights were very high—3¢ a pound—and I had to pay all those extra freight bills.

Mr. CARPENTER.—Do you want me to offer all of these separately, or shall I offer them in a group?

Mr. ESTEB.—It doesn't make any difference to me.

The COURT.—Oh, offer them all at once.

Mr. CARPENTER.—I will, then, offer these documents which the witness has identified in evidence.

The COURT.—Let them be marked Defendants' Exhibit 1.

Differences arose between me and my husband A. W. Wells in the fall of 1906. Mr. Wells struck me. We remained unfriendly until sometime in the latter part of August, 1907. I didn't see Mr. Wells during all of that time. I saw Mr. Wells when I went up to the district in 1907. After my return to the camp, perhaps in August, 1907, our relations were renewed.

I heard the testimony of Mrs. Della Miles to the effect that she had a conversation with me in the spring of 1907 in which I stated to her, at her house, that some parties in Rhyolite had furnished an outfit for Mr. Wells and Burgess to go up to the camp and that I had instructed them to locate everything up there. I did not make that statement to Mrs. Miles. I was at the funeral of Mrs. Miles' son on

(Testimony of Kate J. Wells.)

February 22, 1907. I again saw her in June. I do not remember having seen her at any time between the 22d of February and June. Our relations were not friendly. I went to the funeral of her son because he was a schoolmate of my son (Burgess), also of my boy that married her daughter. I saw Mrs. Miles in June, 1907, at the depot, I think, when the children arrived from the Philippines. By "the children" I mean my son Harold and her daughter Mae. They were married at that time and had just returned from the Philippines. Nothing was said at that time regarding the mining claims in Inyo [68] County. I have talked about mines and things like that in general with my son and Mrs. Miles. My son married a daughter of Mrs. Miles but they are now divorced.

I heard Mr. Turner's testimony with respect to our meeting in the Hollenbeck Hotel in January, 1913. This suit had been begun the December before. My object in seeing Mr. Turner was to find out about a pair of gold-scales that were over at Inyo County that I wished to purchase for the mine—that Mr. Wells had brought over, and I wanted to find out from Mr. Turner if they belonged to him and he said they were not his property. I did not say to Mr. Turner in Hollenbeck Hotel in January, 1913, "If you get all that belongs to you on the hill you will have nearly all of it." I told Mr. Turner if he ever had anything on the hill he would pay hard cash for it. That is what I told him. I did not say to Mr. Turner during the conversation in the

(Testimony of Kate J. Wells.)

Hollenbeck Hotel in January, 1913, that I would rather have him for a partner than Mr. Wells. We spoke something of Mr. Wells' differences and he said to me, "I would be kinder to you than that if I were your partner."

I heard Mr. Creel's statement that on the Don Creel claim in June, 1908, he, Wells and I engaged in a conversation regarding the overlapping of the Beveridge Belle by the Don Creel. I had no conversation on the Don Creel regarding the overlapping of the Beveridge Belle by the Don Creel. I did have a conversation on that subject with Mr. Creel at the house. Mr. Wells was present. Mr. Wells said some very unkind things at the time.

I never at any time had any conversation or communication with A. W. Wells with regard to his locating claims in my name in the Beveridge Mining District during the spring and summer of 1907. I never at any time asked Mr. Wells to locate any claims for me while he was in the Beveridge district in the [69] spring and summer of 1907. I was not on friendly terms with Mr. Wells and would not ask him.

Upon cross-examination the defendant Kate J. Wells further testified, as follows:

We mined on the Columbia in 1890. I was all over the hills where the claims, which are the subject of this suit, are located, in 1890. We were in there also in 1901 and 1902. I stated in my direct examination that nothing was done on these claims in 1906 when my son and I were there. My son

(Testimony of Kate J. Wells.)

Burgess and I were up there in 1906; we went there about the 12th of April, 1906, and remained there about twelve days, to my recollection. We returned on the day of the earthquake in San Francisco; I do not remember what day it was; we arrived at Los Angeles about a day or so after the earthquake. My son Burgess remained with me in Los Angeles after that until September, 1906. He went to Beatty but was too late to take the position of stenographer at the hotel. He went to work for Mr. Mitchell. I do not remember exactly the day Burgess went to Chloride Cliff; I presume it was in October or November. Burgess left Los Angeles on September 30, 1906, to go to Nevada. He remained at Chloride Cliff until some time in February or March, I think. He wrote me that he was going to Inyo County. I stated in my direct examination that I wrote to him to go to Inyo County. I had my outfit and was getting it ready and had the money to get it. That outfit is what I paid for with these checks. It was sent to Keeler. I think Burgess arrived on the property in April, 1907, about the 15th or 16th, judging from the bills. I had letters from him after I wrote him at Chloride Cliff to come to Inyo County before he came. I think I received one from him from Keeler or from Skidoo. Burgess wrote me that Mr. Wells had told him to go to Inyo County with him. I wrote back and told him to have nothing to do with Mr. Wells and not to go [70] with him and warned him not to have anything to do with the man. I don't remem-

(Testimony of Kate J. Wells.)

ber how often I heard from Burgess. I know when Burgess arrived at what is known as Camp Burgess after leaving Rhyolite. I received a letter from him from Keeler. I received one, I think, from Bullfrog, or some place in there. The letter from Keeler was received about the 15th or 16th of April, 1907, telling me that the outfit had not arrived and for me to let him get some things at Tom Boland's store as they had arrived there without provisions. If I said that they did not get to Keeler until some time in the latter part of May or June, I was mistaken. I should judge from the bill that Burgess got from Boland that he arrived there something about the 15th, 16th or 17th. I think the bill is marked the 17th. Burgess was to do the work on the Columbia, Panther, Bromide King and Ben Hur; also to locate the Ironsides. He did the assessment work on Panther, Ben Hur and other claims. I do not know who was working with him on those claims. I do not know that A. W. Wells was working on those claims with him at that time. Mr. Smith was not working there at that time. I hired him in 1908. As to the business I was engaged in here, I made several loans for a firm here and I sold some real estate. I had a class on the piano. I was not working mines at that time from which I was extracting ore.

During the assessment work on the group spoken of (Panther, etc.) Burgess was not taking out ore for the market.

The Ironsides was located in April, 1907, but he

(Testimony of Kate J. Wells.)

did not record it at that time. I think it was on the 27th day of April. He afterwards located it and recorded it. The Catch-em-Mac was located in July 28, 1907, just previous to my going up there.

Q. (By Mr. ESTEB.) Now, these bills and checks which you have identified and which were presented in evidence, are any of those duplicates, or do these bills represent separate accounts, or [71] are some of these checks in payment for these bills?

A. Not for this (indicating).

Q. Are there any other bills in there that you—

A. No, I don't think so.

Q. Was this bill paid by any of these checks in here? A. Not by the checks.

Q. Was it by any of these drafts that are in here, the Wells, Fargo checks?

A. This \$60 was paid to the Tom Boland Estate on Octobed 4 for a bill that was got there by Burgess.

Q. Is that in one of the bills that are in here?

A. No. This is a check here. And that is a receipt, yes. There is a receipt here, yes. There is one receipt here for \$60 from the Tom Boland Estate on October 3.

Q. And that is the check that paid that?

A. Yes, sir, that is the check that paid it.

Q. Were all of those bills, as you recollect them, contracted and the payments made in the year 1907?

A. Yes, sir.

Q. And I understood you to state to Judge Carpenter that was between the 11th day of April and the 4th day of October, 1907? A. Yes.

(Testimony of Kate J. Wells.)

There was no such an outfit over at Camp Burgess as was described by Mr. Creel and Mr. Turner. There was a team of mules, one bay and one brown. No one was using them at the time I was in there. Mr. Wells was cleaning them up all the time. The supplies that were sent to Burgess Robinson in May, June and July, 1907, were sent to him by pack-trains or burros. It is not a fact that nearly everything I sent up there was taken up by the mules. It was impossible for a wagon to get up there. [72]

Upon redirect examination the witness KATE J. WELLS testified as follows:

I borrowed money from my sister Mrs. Gridley to carry on this mining work in Inyo County in 1907. In 1906, I borrowed \$250 and in 1907 I borrowed \$300 from her. That was to spend in connection with Burgess' operations in Inyo County. The check which is now shown me represents the money borrowed from my sister. (Check offered in evidence and admitted without objection.)

Upon recross-examination the witness KATE J. WELLS testified as follows:

I do not remember the date of this check; I think it was some time in April, the first week in April. I borrowed the money from my sister. I borrowed in 1906 \$250 in April when I went to the mines; and I borrowed from her \$300 in April, 1907. The \$300 I repaid to my sister in 1908. The \$250 was paid at the same time. It was not all paid to her on April 4, 1907; it was paid to her in 1908.

Defendants' Exhibit 1 consists of the following papers:

(Note: Not enumerated.)

When the Court rendered its decision, it stated, that after taking the case under consideration, the Court, in considering the case, had concluded to admit in evidence the written statement of T. F. Turner by A. W. Wells, dated February 11, 1912, for all purposes and for what it is worth, but that he did not consider the same sufficient proof to establish the conspiracy between the defendant, Kate J. Wells, and A. W. Wells and Burgess T. Robinson, or sufficient proof to establish and prove the [73] agreement between the defendant, Kate J. Wells, and A. W. Wells and Burgess T. Robinson to defraud Turner and Creel.

Respectfully submitted,

W. B. OGDEN,

RALPH E. ESTEB,

Solicitors for Complainant.

Service of a copy of the above statement of witnesses examined on the trial of the above cause, in Equity, is hereby acknowledged and the same is hereby approved this 22d day of December, 1915.

S. E. VERMILYEA,

S. L. CARPENTER,

Solicitors for Defendants, Kate J. Wells and Ironsides etc. Co.

Approved this 22 day of December, 1915.

BENJAMIN F. BLEDSOE,

U. S. District Judge for Southern District of California.

[Endorsed]: Original. No. 45—Civil. In Eq. In the District Court of U. S., Southern District of Calif., Southern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells et al., Defendants. Condensed Statement of Witnesses' Testimony in Narrative Form. Ralph E. Esteb and William B. Ogden, Main 4505, F-1813, 711 American Bank Building, Second and Spring Streets, Los Angeles, Cal., Attorneys for Plaintiff. Filed Dec. 22, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [74]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING RE-
DUCTION AND LEASING COMPANY, a
Corporation, MRS. E. R. SHOCKMAN,
GEORGE L. ARNOLD and C. J. HECK-
MAN,

Defendants.

Opinion and Order Denying Rehearing.

Petition for a rehearing herein has been filed on the score of newly discovered evidence.

If all the matters alleged in the petition were proved, the result reached in the trial of the cause would not be affected, in my judgment. Many of the matters as to *the name of the party* to whom certain

merchandise was sold is immaterial to any substantial issue in the case.

If Burgess Robinson, who was not acting under or in pursuance of any grubstake agreement with the plaintiff and his copartner, located the Ironsides Group of mines in the name of himself and mother, then the fact that he was in the company of a man (Wells), who was under such grubstake agreement, would not give Wells or his grubstakers any interest in the property so located.

The entire question in the case turned on the answer as to who actually located the Ironsides Group. The Court at the [75] trial answered this by holding that Robinson located that group and that in consequence Well's grubstakers had no interest in the properties. The "newly discovered" evidence does not disprove or militate against this conclusion *in any way*. On the contrary Well's letter to Wilson states explicitly that Wells "paid for his (Robinson's) share of the provision *out of my own money*. *He located some very valuable claims* as I will tell later on; the first claim *he located*, he put his name and mine as locators; then I thought *their* might be complication with the parties who grubstaked me, and told him to put my wife's name on the location in place of mine, and the balance of the claims were located in his name and the name of Mrs. A. W. Wells, so my name does not appear on any of the recorded notices."

This letter was written in an effort on Wells' part to assert and secure some interest *on his own part* in and to the claims in question; no where in the

letter, however, is there the slightest suggestion that the claims *were actually located by him*, or that the plaintiff and his copartner were to participate in the locations.

Such being the case, nothing being shown which would cause the Court to change its decision in the premises, there is no necessity for a rehearing and the application for the same is denied.

BLEDSON,
District Judge.

June 30, 1915.

[Endorsed]: No. 45-Civ. N. D. U. S. District Court, Southern District of California, Northern Division. T. F. Turner, vs. Kate J. Wells et al. Opinion and Order Denying Rehearing. Filed Jun. 30, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. [76]

*In the District Court of the United States, Southern
District of California, Northern Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING REDUCTION AND LEASING COMPANY, a Corporation, MRS. E. R. SHOCKMAN, GEORGE E. ARNOLD and C. J. HECKMAN.

Petition for Allowance of Appeal.

The above-named complainant, T. F. Turner, conceiving himself aggrieved by the decree made and

entered by the said court in the above-entitled cause on March 6, 1915, in dismissing the said Second Amended Bill of Complaint of said plaintiff out of this court and for costs, does hereby appeal from said decision to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Error filed herewith, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which complainant shall give and furnish upon such appeal; and that a citation issue, as provided by law, and prays that this appeal may be allowed, and that the transcript of record, papers and proceedings upon which said decree was made, duly authenticated, in accordance with the rules of Equity promulgated by the Supreme [77] Court of the United States and the statutes made and provided, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WM. B. OGDEN,
RALPH E. ESTEB,

Solicitors for Complainant.

[Endorsed]: Original. No. 45-Civil. In Equity. In the District Court of the United States, Southern District of Cal., Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells et al., Defendants. Petition for Allowance of Appeal. Received copy of the within Petition this — day of June, 1915. ————— Attorney for Defendants. Ralph E. Esteb and William B. Ogden, Main 4505, F-1813, 711 American Bank Building, Second and Spring

Streets, Los Angeles, Cal., Solicitors for Plaintiff.
Filed Dec. 22, 1915. Wm. M. Van Dyke, Clerk. By
R. S. Zimmerman, Deputy Clerk. [78]

*In the District Court of the United States, Southern
District of California, Northern Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING RE-
DUCTION AND LEASING COMPANY, a
Corporation, MRS. E. R. SHOCKMAN,
GEORGE L. ARNOLD and C. J. HECK-
MAN,

Defendants.

Assignments of Error.

Comes now the complainant in the above-entitled cause, by William B. Ogden and Ralph E. Esteb, his solicitors, and assigns the following errors, upon which they will reply upon their appeal from the decree heretofore made and entered by this Honorable Court on the 6th day of March, 1915, in the above-entitled cause, to wit:

I.

That the Court erred in holding that the oral testimony of plaintiff in connection with the written statement of A. W. Wells dated the 11th day of February, 1912, was insufficient to establish the conspiracy between A. W. Wells, Burgess T. Robinson and the defendant, Kate J. Wells, as alleged in plaintiff's Second Amended Bill of Complaint. [79]

II.

That the Court erred in holding that the oral testimony of plaintiff in connection with the written statement of A. W. Wells dated the 11th day of February, 1912, was insufficient to establish the fraudulent transaction between A. W. Wells, Burgess T. Robinson and the defendant, Kate J. Wells, as alleged in plaintiff's Second Amended Bill of Complaint.

III.

That the Court erred in holding that the written statement of A. W. Wells dated the 11th day of February, 1912, by which it was sought to establish a conspiracy with Burgess T. Robinson and the defendant, Kate J. Wells, was not sufficient proof to establish the conspiracy between said A. W. Wells, Burgess T. Robinson and the defendant, Kate J. Wells, as alleged in plaintiff's Second Amended Bill of Complaint.

IV.

That the Court erred in holding that the written statement of A. W. Wells dated the 11th day of February, 1912, by which it was sought to establish the fraudulent transaction between A. W. Wells, Burgess T. Robinson and the defendant, Kate J. Wells, was insufficient proof to establish the agreement between A. W. Wells, Burgess T. Robinson and Kate J. Wells to defraud Turner and Creel in carrying out their grubstake contract.

V.

That the Court erred in striking out the testimony of Mrs. Della Miles, as to the statements made to her

by Burgess T. Robinson, "That he was going to get out of there; that Wells and his mother were raising so much fuss that Creel and Turner would come in and take the whole thing anyhow as soon as they heard of it," by which it was sought to show a statement adverse to the interest of Burgess T. Robinson, whose interest [80] in this property, later on, upon his death, became the property of his mother, Kate J. Wells, one of the defendants herein.

VI.

That the Court erred in rendering its decree dismissing plaintiff's Second Amended Bill of Complaint, for the reason that said decree is against the weight of the evidence and contrary to the law under the evidence.

In order that the foregoing Assignments of Error may be made of record, the defendants present the same to the Court and petition that disposition may be made thereof in accordance with the laws of the United States thereunto provided.

WHEREFORE, the said complainant prays that the said decree and order of this Court made and entered on the 6th day of March, 1915, dismissing complainant's Second Amended Bill of Complaint, be reversed in part and in whole, and that the United States District Court for the Southern District of California, Southern Division, be directed to enter an order setting aside in entirety the order and decree of March 6, 1915.

Respectfully submitted,
W. B. OGDEN,
RALPH E. ESTEB,
Solicitors for Complainant.

[Endorsed]: Original. No. 45—Civil. In Eq. In the District Court of United States, Southern District of California, Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells, et al., Defendants. Assignments of Error. Ralph E. Esteb and William B. Ogden, Main 4505, F-1813, 711 American Bank Building, Second and Spring Streets, Los Angeles, Cal., Solicitors for Plaintiff. Filed Dec. 22, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [81]

*In the District Court of the United States, Southern
District of California, Northern Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING REDUC-
TION AND LEASING COMPANY, a Corpo-
ration, MRS. E. R. SHOCKMAN, GEORGE
L. ARNOLD and C. J. HECKMAN,

Defendants.

Order Allowing Appeal.

In the above-entitled cause, the complainant, through the solicitors, William B. Ogden and Ralph E. Esteb, having filed his petition for an order allowing an appeal from the decree of this court made and entered March 6th, 1915, and it appearing to the Court that said complainant has filed Assignments of Error:

IT IS HEREBY ORDERED, that an appeal to the United States Circuit Court of Appeals for the

the United States Circuit Court of Appeals for the Ninth Circuit, from the decree in said cause made and entered on the 6th day of March, 1915, be and the same is hereby allowed; and that the bond for costs be and the same is hereby fixed at the sum of two hundred and fifty dollars. [82]

IT IS FURTHER ORDERED, that upon the filing of such security a certified transcript of the records and proceedings herein be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in accordance with the rules of Equity by the Supreme Court of the United States promulgated, and in accordance with the statutes made and provided.

Dated December 22, 1915.

BLED SOE,
District Judge.

[Endorsed]: Original. No. 45—Civil. In Eq. In the District Court of U. S. for the Southern District of Calif, Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells et al., Defendants. Order Allowing Appeal. Received copy of the within order this — day of June, 1915. —, Attorney for Defendants. Ralph E. Esteb and William B. Ogden, Main 4505, F-1813, 711 American Bank Building, Second and Spring Streets, Los Angeles, Cal., Solicitors for Plaintiff. Filed Dec. 22, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [83]

*In the District Court of the United States, Southern
District of California, Northern Division.*

No. 45—CIVIL. IN EQUITY.

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS, IRONSIDES MINING REDUC-
TION AND LEASING COMPANY, a Corpo-
ration, MRS. E. R. SHOCKMAN, GEORGE
E. ARNOLD and C. J. HECKMAN,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, T. F. Turner, as Principal, and J. W. Wal-
lace, Jr., J. W. Brunton and George L. Smith, as
Sureties, are held and firmly bound unto Kate J.
Wells, Ironsides Mining Reduction and Leasing
Company, a corporation, Mrs. E. R. Shockman,
George L. Arnold and C. J. Heckman, defendants in
the above-entitled action, in the penal sum of two
hundred and fifty dollars, to be paid to said Kate J.
Wells, Ironsides Mining Reduction and Leasing
Company, a corporation, Mrs. E. R. Shockman,
George L. Arnold and C. J. Heckman, their heirs and
assigns, for the payment of which sum well and truly
to be made we bind ourselves, our heirs, executors
and administrators firmly by these presents.

The condition of the above obligation is such that,
whereas, the said complainant, T. F. Turner, of the

above-entitled action is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree made, [84] rendered and entered on the 6th day of March, 1915, by the District Court of the United States for the Southern District of California, Northern Division, in the above-entitled cause, in which the Bill of Complaint of the said complainant, T. F. Turner, was dismissed:

NOW, THEREFORE, the condition of the above obligation is such that if said T. F. Turner shall prosecute his said appeal to effect and answer all costs, if he fails to make his plea good, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, the seals and signatures of said principal and said sureties are hereto affixed at Los Angeles, California, this 22d day of December, 1915.

T. FRANK TURNER. (Seal)

J. W. WALLACE, Jr. (Seal)

GEORGE L. SMITH. (Seal)

JOHN W. BRUNTON. (Seal)

Approved this 22d day of December, 1915.

BLEDSON,
District Judge.

United States of America,
Southern District of Cal.,
County of Los Angeles,—ss.

J. W. Wallace, Junior, J. W. Brunton and George L. Smith, the sureties named in the above and foregoing bond, being duly sworn, each for himself says,

that he is a freeholder and resident within said State, and is worth the sum of [85] two hundred and fifty dollars, over and above all his debts and liabilities, exclusive of property exempt from execution.

J. W. WALLACE, Jr.

GEORGE L. SMITH.

JOHN W. BRUNTON.

Subscribed and sworn to before me this 22d day of December, 1915.

[Seal]

MARY E. MORRIS,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No. 45-Civil. In Eq. In the District Court of U. S., Southern District of Cal., Southern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells et al., Defendants. Bond on Appeal. Ralph E. Esteb and William B. Ogden, Main 4505, F-1813, 711 American Bank Building, Second and Spring Streets, Los Angeles, Cal., Attorney for Plaintiff. Filed Dec. 23, 1915. Wm. M. Van Dyke. By R. S. Zimmerman, Deputy Clerk. [86]

ORIGINAL.

*In the District Court of the United States, Southern
District of California, Southern Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS,

Defendant.

Praecipe for Preparation of Transcript.
PRAECIPE UNDER EQUITY RULE 75.

To the Clerk of the Court:

You will please incorporate into the transcript on appeal from this court to the Circuit Court of Appeal, an order approving appeal on behalf of plaintiff made and entered on the 22d day of December, 1915, the following portions of the record of this cause in equity, to wit:

A certified copy of the condensed statement of the testimony of witnesses in narrative form, as approved by the Court on the 22d day of December, 1915;

Second Amended Bill of Complaint herein;

The Assignments of Error filed herein;

Names and Addresses of the solicitors and counsel for the parties herein;

The Citations on Appeal herein;

The Petition for Order Allowing Appeal herein;

The Order Allowing Appeal herein;

The Defendants' Exhibits #1 or duly certified copy thereof, as filed herein; [87]

Written opinion denying petition for rehearing dated June 30, 1915.

Decree of court herein.

Very respectfully,

WM. B. OGDEN,

RALPH E. ESTEB,

Solicitors and Counsel for Plaintiff-Appellant.

Due service and receipt of a copy of the within Citation is hereby admitted this 23 day of December, 1915.

S. E. VERMILYEA,
S. L. CARPENTER,

Counsel and Solicitation for Defendants.

[Endorsed]: Original. No. 45-Civil. In Equity. In the District Court of U. S., Southern District of Calif.. Southern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells et al., Defendants. Praecipe Under Equity Rule 75. Ralph E. Esteb and William B. Ogden, Main 4505, F-1813, 711 American Bank Building, Second and Spring Streets, Los Angeles, Cal., Attorneys for Plaintiff. Filed Dec. 23, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [88]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division.*

No. 45-CIV.—IN EQUITY.

T. F. TURNER,

Complainant,

vs.

KATE J. WELLS et al.,

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing eighty-eight (88) typewritten pages, numbered from 1 to 88, inclusive, to be a full, true and correct copy of the Second Amended Bill of

Complaint, Answer to Second Amended Bill of Complaint, Minute Order of Court of date, March 10th, 1913, Minute Order of Court of date, February 23d, 1915, Final Decree, Order Denying Petition for Rehearing, Defendants' Exhibit One, Condensed Statement of Testimony in Narrative Form, Petition for Allowance of Appeal, Assignments of Error, Order Allowing Appeal, Bond on Appeal, and Praecipe for Preparation of Transcript, in the above and therein entitled cause, and that the same together constitute the Transcript upon Appeal of T. F. Turner herein, in accordance with the Praecipe for Preparation of Transcript filed in my office on behalf of the appellant by his solicitors of record. [89]

I do further certify that the cost of the foregoing Transcript upon Appeal is \$48.60, the amount whereof has been paid me by T. F. Turner, the appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Northern Division, this 27th day of May, in the year of our Lord, one thousand nine hundred and fifteen, and of our Independence the one hundred and fortieth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled
5/27/16. L. S. C.] [90]

[Endorsed]: No. 2798. United States Circuit Court of Appeals for the Ninth Circuit. T. F. Turner, Appellant, vs. Kate J. Wells, Ironsides Mining Reduction and Leasing Company, a Corporation, Mrs. E. R. Shockman, George E. Arnold and C. J. Heckman, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed May 31, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the District Court of the United States, Southern
District of California, Southern Division.*

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS et al.,

Defendants.

Order Extending Time to March 31st, 1916.

Good cause appearing therefor,

IT IS HEREBY ORDERED, that the time heretofore allowed said appellant to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby enlarged

and extended to and including the 31st day of March, 1916.

Dated Los Angeles, California, Jan. 12, 1916.

BLEDSON,

U. S. District Judge, Southern District of California,
Southern Division.

[Endorsed]: Original. No. 45—Civil. In Eq. In the District Court of U. S., Southern District of Calif., Northern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells et al., Defendants. Order Extending Time to March 31st, 1916.

No. 2798. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to March 31, 1916, to File Record Thereof and to Docket Case. Filed Jan. 15, 1916. F. D. Monckton, Clerk. Refiled May 31, 1916. F. D. Monckton, Clerk.

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 45—CIVIL. IN EQUITY.

T. F. TURNER,

Plaintiff,

vs.

KATE J. WELLS et al.,

Defendants.

Order Extending Time to May 31st, 1916.

Good cause appearing therefor,

IT IS HEREBY ORDERED, that the time heretofore allowed said appellant to docket said cause

and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 31st day of May, 1916.

Dated at Los Angeles, California, March 27, 1916.

BLEDSON,

U. S. District Judge, Southern District of California,
Southern Division.

[Endorsed]: Original. No. 45-Civil. In Eq. In the District Court of U. S., Southern District of California, Southern Division. T. F. Turner, Plaintiff, vs. Kate J. Wells et al., Defendants. Order Extending Time to May 31st, 1916.

No. 2798. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to May 31, 1916, to File Record Thereof and to Docket Case. Filed Apr. 3, 1916. F. D. Monckton, Clerk. Refiled May 31, 1916. F. D. Monckton, Clerk.